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## Sixth Committee

**Summary record of the 8th meeting**
**Held at Headquarters, New York, on Tuesday, 16 October 2007, at 10 a.m.**

*Chairman*: Mr. Sandoval (Vice-Chairman) .................................... (Colombia)

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**Agenda item 85: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization**

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*In the absence of Mr. Tulbure (Moldova), Mr. Sandoval (Vice-Chairman) took the Chair.*

*The meeting was called to order at 10.05 a.m.*

**Agenda item 85: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization** (A/62/33, A/62/124 and Corr.1, A/62/206 and Corr.1; A/C.6/62/L.6)

1. **Mr. Towpik** (Poland), Chairman of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, introducing the Special Committee's report (A/62/33), noted that the Special Committee had met in New York from 7 to 15 February 2007 to continue its deliberations on the questions mandated by General Assembly resolution 61/38. He drew attention in particular to chapter III, relating to the maintenance of international peace and security. Pursuant to the General Assembly's request, the Special Committee had considered on a priority basis the question of the implementation of the Charter provisions related to assistance to third States affected by the application of sanctions (paras. 14-19). The rest of the chapter dealt with the Special Committee's consideration of a number of documents: the revised working paper submitted by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures"; the further revised working paper submitted by the Russian Federation entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations"; the revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions; the Russian Federation's working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations"; the working papers submitted by Cuba at the 1997 and 1998 sessions entitled "Strengthening of the role of the Organization and enhancing its effectiveness"; the revised proposal submitted by the Libyan Arab Jamahiriya concerning the role of the United Nations in the maintenance of international peace and security; and the revised working paper submitted by Belarus and the Russian Federation concerning a request for an advisory opinion of the International Court of Justice.

2. Chapter IV concerned the peaceful settlement of disputes. Under that item, the Special Committee had had no specific proposals before it. The discussions on the *Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council* were summarized in chapter V. Lastly, chapter VI contained a summary of the discussions on the Special Committee's working methods and the identification of new subjects.

3. **Ms. Arsanjani** (Secretary of the Committee), speaking as the Director of the Codification Division and introducing document A/62/124 and Corr.1, summarized the results achieved in the previous 12 months with regard to the *Repertory of Practice of United Nations Organs*. In 2007, volume I of Supplement No. 9 (1995-1999) had been finalized and submitted for translation and publication. Volume V of Supplement No. 8 (1989-1994) and volume V of Supplement No. 9 (1995-1999) had been completed and were being submitted for translation and publication. The backlog in respect of those volumes had therefore been eliminated, and all studies pertaining to them were available on the United Nations website for the *Repertory*. Advance versions of several studies on individual Articles of the Charter had also been finalized and placed on the website. Those studies pertained to volume II of Supplements No. 7, 8 and 9 and volume IV of Supplements No. 8 and 9. As a means of addressing the backlog on volume II of Supplements No. 7, 8 and 9 (1985-1999), articles on which studies of the *Repertoire* and the *Repertory* overlapped had been identified. Volume II of Supplement No. 6, which had been available on the Internet for some time, had been issued in hard copy.

4. Studies from 32 complete volumes, together with studies on individual Articles of the Charter from seven volumes not yet complete, were available on the United Nations website for the *Repertory*. All studies available in English were on the website, together with 57 per cent of the studies in French and 32 per cent of those in Spanish. The Secretariat would continue its efforts to make all three language versions of published *Repertory* studies available electronically. The report of the Secretary-General (A/62/124) contained additional information concerning publication of volumes in language versions.

5. The well-established cooperation with Columbia University Law School had continued for the fourth consecutive year, and the collaboration project established with French-speaking academic institutions had also continued and had produced its first results. The Secretariat found significant benefit in cooperation with academic institutions and would continue to take advantage of the involvement of externs and interns, mainly in the area of research and collection of documentation. Naturally, the Secretariat retained ultimate responsibility for the preparation of studies.

6. In its resolution 61/38, the General Assembly had reiterated its call for voluntary contributions to the trust fund established pursuant to resolution 59/44 to eliminate the backlog in the *Repertory*. The Secretariat welcomed the first donations to the trust fund of $30,000 and $3,000, received from the Governments of Greece and Turkey respectively. Further contributions would enable the Secretariat to accelerate work on the *Repertory* in a more sustained manner.

7. Lastly, the Interdepartmental Committee on Charter *Repertory* had decided that Supplement No. 10 would cover the period from 2000 to 2005.

8. **Mr. Boventer** (Security Council Practices and Charter Research Branch, Department of Political Affairs), updating the Committee on the status of the *Repertoire of the Practice of the Security Council*, said that the Secretariat had continued to implement the two-track approach most recently endorsed by the General Assembly in its resolution 61/38. That approach had allowed it to focus on contemporary Council practice, while simultaneously ensuring progress in the preparation of the Supplements covering the Council's practice during the previous decade. Hard copies of the eleventh Supplement (1989-1992) were expected to be available in English in November 2007, with the other language versions following shortly thereafter. The eleventh Supplement had been redesigned and was expected to have 1,100 pages, approximately twice the number of pages in the tenth Supplement. The twelfth Supplement, covering the period 1993-1995, had been sent for editing; in the meantime, the advance version was available on the *Repertoire* website. The thirteenth Supplement, covering the period 1996-1999, would be completed by the end of 2007, and advance versions of several chapters had been posted on the *Repertoire* website.

9. With regard to the Council's contemporary practice, significant progress had been made on the millennium volume (the fourteenth Supplement), covering the period 2000-2003. Advance versions of all but one chapter dealing with the procedural and constitutional aspects of the Council's practice were due to be completed and posted on the *Repertoire* website by the end of 2007. As part of its ongoing efforts to expedite Member States' access to material on current Council practice and to bring the publication of the *Repertoire* back on schedule, the Secretariat had focused all its efforts in the past year on completing and making available the twelfth, thirteenth and fourteenth Supplements. Progress on the fifteenth Supplement was expected to pick up pace once the last chapter of the millennium volume had been completed. In addition, the Security Council Practices and Charter Research Branch had been providing information on request to Member States on questions relating to the practice of the Council and its subsidiary bodies. In an effort to further advance the dissemination of the *Repertoire*, CDs had been prepared containing the English version of all the Supplements published to date and posted in advance form on the Internet.

10. As mandated by the General Assembly, the Secretariat would continue to submit completed and edited volumes of the *Repertoire* for translation into and publication in all official languages. In that context, every volume of the *Repertoire* in French had been made available on the *Repertoire* website.

11. In a situation of persistent financial constraint, voluntary contributions to the trust fund for the updating of the *Repertoire* remained important in sustaining progress in the preparation of the publication. The Secretariat was grateful to those Member States that had made contributions. In the past year, contributions to the fund had been received from Albania, Angola, Greece, Ireland, the Republic of Korea, the Russian Federation, Turkey and the United Kingdom. The Secretariat was also grateful to Germany and Italy for the sponsorship of their respective associate experts. He appealed to Member States to continue supporting the work on the *Repertoire* by contributing to the trust fund or by sponsoring an associate expert.

12. **Mr. Beras Hernández** (Dominican Republic), speaking on behalf of the Rio Group, said that issues relating to the maintenance of peace and security had been discussed extensively by the Special Committee

over a number of years. At the current stage it was important to concentrate on those elements which enjoyed broad acceptance among Member States, with a view to preparing a document that could be recommended to the General Assembly or the Special Committee on Peacekeeping Operations.

13. The Security Council had made significant progress in the areas of due process and transparency in the procedures for the application of sanctions. Nonetheless, the issue of sanctions should remain on its agenda. The Group welcomed the revised working paper from the Russian Federation entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations" (A/C.6/62/L.6) and looked forward to a comprehensive debate on the subject.

14. The Group reiterated its conviction that States that were parties to a dispute should make every effort to achieve a peaceful settlement, in accordance with the principle of free choice of means set out in the Charter. It also reiterated its recognition of the important role of the International Court of Justice, as the principal judicial organ of the United Nations, in adjudicating disputes among States. In that regard, the Group repeated its request for the timely distribution of the advisory opinions requested by the principal organs of the United Nations as official documents of the Organization, as envisaged in General Assembly resolution 61/38.

15. The time was right for the Special Committee to begin considering new subjects. The Rio Group had already made proposals for the inclusion of new items in the Special Committee's agenda, in particular an item entitled "Consideration of the legal aspects of the reform of the United Nations" and an item on the review of the rules of procedure of the General Assembly. The Rio Group expressed the hope that the Special Committee's work could be reinvigorated through the discussion of new subjects, which would reaffirm the Special Committee's relevance in the process of reforming the Organization.

16. Lastly, the Group welcomed the progress made in the publication of volumes of the *Repertoire of the Practice of the Security Council and the Repertory of Practice of United Nations Organs*. It continued to support enhanced cooperation with academic institutions in that regard and called for voluntary contributions to the trust funds for the updating of the two publications.

17. **Mr. Madureira** (Portugal), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania and Serbia; and, in addition, Armenia, Liechtenstein, Moldova, Norway and Ukraine, said that the European Union regarded sanctions, applied in accordance with the Charter of the United Nations, as an important tool in the maintenance and restoration of international peace and security. The Special Committee had held useful discussions at its February 2007 session on the basis of the revised working paper entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations". The debate was also taking on a dynamic of its own in various other forums, both public and private, with the participation of the international community and academia. European Union member States had been actively engaged in the process of reflection aimed at enhancing the design, implementation and effectiveness of sanctions, in some cases leading important research initiatives in that regard.

18. The European Union welcomed the final report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997), which set out an impressive range of best practices and methods that would doubtless help improve the targeting and effectiveness of sanctions. The Council had also made notable progress on the issue of procedures for the listing and de-listing of individuals and entities. Pursuant to its request in resolution 1730 (2006) a focal point had been established within the Secretariat to receive de-listing requests. With respect to the Al-Qaeda and Taliban Sanctions Committee, resolution 1735 (2006) had introduced further steps designed to make listing and de-listing procedures more predictable, transparent and fair. It also provided more guidance on the proposal of names for inclusion on the consolidated list maintained by that Committee. The Special Committee should take all those developments into consideration when pondering the future direction of its work on the issue. The targeted nature of existing sanctions regimes had led to significant reductions in unintended consequences. The issue of assistance to

third States affected by the application of sanctions was therefore becoming less relevant.

19. The European Union commended the work of the Special Committee with regard to the fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter. It also welcomed the progress made with regard to the publication of volumes of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, and particularly the efforts to make the publications available on the Internet, and encouraged further use of the United Nations internship programme and expanded cooperation with academic institutions in that endeavour. The European Union was also grateful to those States that had contributed to the trust funds established to facilitate the preparation of the publications and those that had sponsored associate experts, and encouraged other Member States to make similar contributions.

20. The European Union had welcomed the adoption in 2006 of the working paper on the working methods of the Special Committee. However, only limited progress had been achieved since then. The European Union stood ready to continue work on that subject on a priority basis. It was also time to take a fresh look at the issues on the Special Committee's agenda. Work should continue in those areas where agreement was possible and results could be achieved, but should be reconsidered or discontinued in areas on which no progress had been made over the years or where there was a risk of duplicating work undertaken elsewhere. In that context, the European Union was somewhat cautious about the inclusion of new items in the Special Committee's agenda.

21. **Ms. Vargas Walter** (Cuba), speaking on behalf of the Non-Aligned Movement, said that the Special Committee had a key part to play in the current process of reforming the United Nations, in particular by considering its legal aspects. The democratization of the principal organs of the United Nations and respect for the role and authority of the General Assembly are important elements of that process.

22. The Non-Aligned Movement was seriously concerned about the matter of sanctions imposed by the Security Council, which should only be used as a last resort. Their purpose was not to punish or take reprisals against the population. They should be legally justified, have a specific time frame and clearly defined objectives and be subject to periodic review; once their objectives had been achieved, they should be lifted. They should only be applied when there was a threat to international peace and security or an act of aggression and never preventively, merely because of a violation of international law. Targeted sanctions might be a better option, provided that the population of the target State did not suffer from them, either directly or indirectly.

23. **Mr. Zinsou** (Benin), speaking on behalf of the African Group, said that the power of the Security Council to impose sanctions should be exercised in accordance with the Charter of the United Nations and international law and only after exhaustion of all peaceful means of settlement. Sanctions should be imposed within a specific time frame and should be lifted as soon as their objectives had been achieved; they should be non-selective and targeted so as to mitigate their effects on the population.

24. The African Group attached special importance to article 50 of the Charter, under which any State had a right to consult the Security Council with regard to a solution of economic problems confronting it as a result of preventive or enforcement measures taken against another State. Moreover, the Group was greatly concerned about unilateral economic sanctions being used as an instrument of foreign policy against developing countries in violation of international law and the right to development.

25. It was important to assist third States affected by sanctions, as recognized in the relevant General Assembly resolutions, and to continue the work of the Working Group on General Issues of Sanctions. The African Group reiterated its support for the draft submitted by the Russian Federation entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions" and for the proposal made by the Libyan Arab Jamahiriya, particularly regarding the possible payment of compensation to target and/or third States for damage caused by the unlawful imposition of sanctions. The African Group, while supporting the principle embodied in the Charter of free choice of means of peaceful settlement, reaffirmed the important role played by judicial mechanisms, in particular the International Court of Justice, and urged Member States to make the most effective use of existing methods for the prevention and peaceful settlement of

disputes. Lastly, the Group welcomed the progress made in eliminating the backlog in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*.

26. **Ms. Negm** (Egypt) said that the Special Committee was a fundamental tool for ensuring that the United Nations fully performed its role with regard to conflict prevention and settlement and enforcement of the collective security system; its capacity to discharge that mission was being curtailed, however, because the interests of some were prevailing over those of others. Moreover, the Special Committee's ability to achieve concrete results with regard to dispute settlement had been hampered by a lack of political will to settle disputes and the continued application of double standards. It was important to respect the mandates of all United Nations organs: the Security Council should not interfere in the affairs of the General Assembly or of the Economic and Social Council; and the delicate balance between the various organs established by the Charter should be maintained. That would ensure greater transparency, accountability and democracy in the adoption of resolutions to benefit all Member States without exception.

27. The Security Council should act as a representative of all States Members of the United Nations and not just its own members and to that end should undertake to observe a number of minimum standards. It should not impose sanctions unless all peaceful means of settlement had been exhausted or unless the State concerned refused to cooperate with the international community; it should not apply sanctions for political purposes; its sanctions should be imposed gradually, within specific time limits, and should be lifted upon their expiration; it should be alert to humanitarian concerns, in respect not only of target States but also of third States; and, lastly, it should not rely on information provided by its members or by others without investigating its accuracy.

28. Her delegation welcomed the developments with regard to discussions on the declaration on the subject of sanctions submitted by the Russian Federation and regretted that the mandate of the Working Group on General Issues of Sanctions had been discontinued. It supported the proposal to request an advisory opinion from the International Court of Justice concerning the legal consequences of the use of military force by a State without the prior consent of the Security Council. It considered that the Working Group on Security Council Reform should continue to work to make the Council more representative of all States, especially African States, developing and small countries and small island developing States. The Special Committee should continue improving its working methods, with a view to completing work on some of the proposals before it. Her delegation thanked the Secretariat on its efforts to ease the backlog in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council*, and looked forward to the time when both publications would be available on the Organization's website in all the official languages of the United Nations.

29. **Ms. Tansu-Seçkin** (Turkey) said that, while aligning itself with the statement made on behalf of the European Union, Turkey attached special importance to the question of third States affected by the application of sanctions, having itself suffered considerably as such a State. The report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997, annex) contained no recommendations on ways of assisting untargeted States affected by sanctions, while the further revised working paper on basic conditions and standard criteria for the introduction and implementation of sanctions submitted by the Russian Federation no longer referred to the non-permissibility of situations where third States would suffer from the consequences of sanctions, specifying simply that such situations should be avoided; in addition, it did not provide for consultation with third States before the imposition of sanctions or for relief measures. For those reasons, the further revised working paper required additional consideration.

30. Her delegation attached the utmost importance to the principle of free choice of means in the settlement of disputes: the consent of the parties concerned should be required before referral to a dispute-solving body. It looked forward to the continued updating of the *Repertory* and the *Repertoire* and hoped that its contribution would assist that effort. Lastly, the delegation believed that the Special Committee should be used much more efficiently.

31. **Mr. Goulder** (Libyan Arab Jamahiriya) said his delegation supported the recommendations mentioned by the Special Committee in paragraph 13 of its report (A/62/33) and any other measures that could advance

its work and improve its working methods. His delegation also reaffirmed the importance that it attached to the Special Committee's work and its contribution to the legal aspects of United Nations reform.

32. The Special Committee should not overlook the commitments arising from the 2005 World Summit and the legal aspects thereof, nor should it ignore the important issue of sanctions and the procedures for their implementation. The competence of the Security Council was based on the purposes and principles of the Charter of the United Nations and on the rules of international law. Sanctions should therefore be used only as exceptional measures, after all other available legal measures had been exhausted; they should have a limited time frame, and a specific objective, and be imposed for reasons based on objective criteria. In order to ensure that those conditions were met, those wishing to abuse sanctions must be held accountable for their direct and indirect social and economic impact. The establishment of true democracy in United Nations organs and in the relations between the General Assembly and the Security Council was at the core of the reform process. Therefore, the issue of sanctions was of central importance and should remain on the Special Committee's agenda.

33. **Mr. Kang'ombe** (Zambia) emphasized the importance of the effective implementation of Article 50 of the Charter in view of the suffering often caused to innocent people by sanctions affecting untargeted countries. Sanctions should have a clear purpose and specific duration and they should be targeted; they should be applied in a transparent manner and should end when they had served their purpose. They should also be subject to periodic review in order to mitigate their adverse affects on ordinary people and on third States. His delegation therefore welcomed the recommendations and best practices set out in the report of the Informal Working Group of the Security Council on General Issues of Sanctions (S/2006/997, annex) concerning improved sanctions design and monitoring, while regretting that they contained no explicit mention of ways of assisting untargeted States affected by the unintended impact of sanctions. In imposing sanctions, the Security Council must have due regard for the Charter of the United Nations and the rules of international law. The relevant decisions on sanctions contained in the 2005 World Summit Outcome should continue to be implemented for the benefit of affected Member States.

34. **Mr. Medrek** (Morocco) said the Special Committee had originally made a good start on fulfilling its important mandate of strengthening the role of the Organization but in recent years had made little progress owing to a lack of the political will and flexibility needed to conclude its examination of a number of proposals that had long been on its agenda.

35. His delegation considered that the application of sanctions, while necessary whenever the Security Council determined the existence of a threat to the peace, a breach of the peace or an act of aggression, should be a last resort. Sanctions should be imposed within a precise time frame; they should be periodically reviewed and lifted once they had fulfilled their purpose. Care should be taken to ensure that they did not have the opposite effect to that intended and cause harm both to target States and to third States. In practice, despite the efforts made, they affected innocent civilian populations and led to the economic destabilization of target States and/or third States. The Security Council had, however, taken commendable measures in that regard, by adopting new procedures for placing individuals and entities on sanctions lists and for removing them, and it should continue its efforts along those lines.

36. The revised working paper on basic conditions and standard criteria for the introduction and implementation of sanctions submitted by the Russian Federation (A/C.6/62/L.6) had taken into account a large number of comments and proposals made at previous sessions of the Special Committee and could therefore be recommended to the General Assembly for adoption. His delegation supported the idea of setting up a working group to conduct consultations on the text.

37. The significant evolution of the character of peacekeeping operations and the Organization's considerable experience in that field provided a basis for the elaboration of a unified document that could assist the Security Council in the preparation of its resolutions regarding the establishment of future peacekeeping operations. Furthermore, the question should be raised whether the legal basis of peacekeeping might not be considered in the General Assembly.

38. With regard to the peaceful settlement of disputes, the Special Committee's discussion of the question seemed, regrettably, to be of little use, since no specific proposal had been received on that matter.

39. His delegation wished to emphasize once again the usefulness and importance of the *Repertory* and the *Repertoire* and welcomed the Secretariat's efforts to reduce the backlog in their preparation and publication.

40. Concerning the Special Committee's working methods, his delegation welcomed the adoption by that Committee of the working paper submitted by Japan (A/61/33, para. 72). It considered that the work of the Special Committee could be revitalized by the addition of an interesting topic. The proposal made by the Rio Group concerning the item entitled "Consideration of the legal aspects of the reform of the United Nations" might be an avenue worth exploring.

41. **Ms. Chen** Peijie (China) said that, over the years, the Special Committee had played an active role in maintaining world peace and security and promoting peaceful solutions of disputes. Sanctions should be governed by strict standards on account of their substantial impact and possibly adverse effects on third countries. The Special Committee's study of that issue from a legal perspective would help to improve sanctions regimes which must meet the following criteria. First, the decision to apply sanctions should be in line with the United Nations Charter and the principles of international law. Secondly, sanctions should be applied only once peaceful means for solving disputes endangering world peace and security had been exhausted. Thirdly sanctions must be clearly targeted with an explicit time frame and purpose. The revised working paper submitted by the Russian Federation reflected the concerns of all sides. As his delegation hoped that the Special Committee's deliberations on the paper would soon produce results, it supported the proposal to set up a working group within the Sixth Committee to study the paper.

42. Although assistance to third States affected by sanctions had long been a major concern of the Special Committee, the negative impact of sanctions on those States remained a practical problem to which a solution had to be found. It was therefore imperative to develop methodology for assessing that impact and to explore feasible measures for extending international assistance to affected States. Possible options in that respect might be the setting up of a fund, the establishment of a permanent consultative mechanism, multi-channel financial arrangements and economic assistance.

43. The development of a set of guidelines for United Nations peacekeeping operations was another matter deserving the Special Committee's attention, although his Government was flexible as to which body should discuss that question. The Special Committee could also identify and study new subjects reflecting current needs, but no new topic should entail any amendment of the Charter without the General Assembly's explicit authorization. Amendment of the Charter should be approached prudently with a view to strengthening the role of the Organization. Provided that all Governments demonstrated enough political will, the Special Committee could contribute effectively to the process of revitalizing the United Nations.

44. **Mr. Oraon** (India) said that the Security Council bore the primary responsibility for maintaining international peace and security and for finding definitive solutions to the problems of third States affected by sanctions imposed by the United Nations, in accordance with Article 50 of the Charter. He was therefore pleased to note that the Security Council had adopted various measures to mitigate the effects of sanctions on third States and to ensure that sanctions were carefully targeted, with the result that the unintended economic consequences for third States had been significantly reduced. The unfreezing of assets to allow payments due under a contract constituted a further move in the right direction. He was also glad that, owing to the steps taken, during the period under review, no Member State had approached any of the sanctions committees to report any special economic problems arising from the implementation of sanctions. One reason for the success of those measures was that, as part of the international community's effort to counter global terrorism, the Security Council had shifted from sanctions against States to those targeting individuals and non-State entities. Nevertheless if the Security Council decided to order major new sanctions against a State, the issue of third country hardship might resurface. For that reason, the Russian proposal remained relevant, since the adoption of fair and clear procedures making for the requisite transparency and certainty would strengthen the effectiveness and credibility of the sanctions regime. He therefore supported the idea of establishing a working group within the Sixth Committee to examine the topic of sanctions and third States.

45. Turning to the Russian Federation's working paper entitled "Fundamentals of the legal basis for United Nations peacekeeping operations in the context of Chapter VI of the Charter of the United Nations", he said that although the political and operational aspects of peacekeeping were being dealt with by other specialized committees, the Special Committee could contribute by scrutinizing the subject from a legal perspective.

46. Seeking an advisory opinion from the International Court of Justice on the legal consequences on resorting to the use of force without the Security Council's authorization, as proposed by the Russian Federation and Belarus, would provide an opportunity to clarify certain important legal aspects of the question.

47. The general membership of the United Nations was greatly concerned by the fact that the Security Council's continuing encroachment on the General Assembly's mandate had not been prevented by the clear demarcation of powers in the Charter, or by the expansion of non-permanent membership of the Security Council. Widening permanent membership, with the new permanent members being held accountable through draconian reviews, would be the only way of introducing the checks and balances needed in order to prevent encroachment and enhance the efficiency of the United Nations.

48. His Government supported continued work on the *Repertory of Practice of United Nations Organs*, because it was a valuable source of information on the application of the Charter and an indispensable tool for preserving the Organization's institutional memory. It was likewise in favour of updating the *Repertoire of the Practice of the Security Council*.

49. **Mr. Abdelsalam** (Sudan) said that the Special Committee had been established to consider specific proposals submitted by Governments on enhancing the capacity of the United Nations to achieve the aims set out in the Charter and had negotiated a number of proposals relating to the adoption by the General Assembly of legal documents on the peaceful settlement of disputes and the development of cooperation mechanisms between the United Nations and regional organizations relating to international peacekeeping and security, the most recent of which was General Assembly resolution 57/26.

50. The substantive proposals submitted by Member States had been thoroughly discussed by the Special Committee and some had been agreed upon by all delegations but had not been issued as a document. Some delegations had seriously considered withdrawing their proposals because they remained caught up in theoretical debate; that situation had brought the work of the Special Committee to a virtual standstill. The time was ripe for the General Assembly to compile those proposals on which there was virtual consensus and convert them into a legislative reality that would guide States and allow the Special Committee to investigate new proposals for strengthening the Organization particularly in view of the continuing drive to reform the latter's institutions and practices.

51. His delegation considered sanctions to be a priority issue. The 2005 World Summit considered them to be an important tool for maintaining international peace and security without recourse to the use of force and noted the need to implement and monitor them effectively with clear benchmarks and terminate them once their objectives have been achieved. On the basis of that document and the provisions of the Charter, recourse to sanctions was a last resort after the exhaustion of all other peaceful means. Sanctions must be guaranteed not to harm civilians and third parties or used as a tool for exerting political pressure.

52. His delegation welcomed the efforts of the Secretary-General to speed up the preparation and publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and commended the proposals of the Special Committee contained in its most recent report.

53. **Ms. Pino Rivero** (Cuba) said that, because of the mandate it had been given by General Assembly resolution 3499 (XXX), the Special Committee was predestined to play an essential part in the process of reforming the United Nations. She therefore supported the recommendation that the negotiation of any amendment of the Charter resulting from the current reform process should take place within the Special Committee.

54. It was more necessary than ever before to uphold the purposes and principles of the Charter and to press on with genuine reform to democratize the

Organization. It was also vital to find a lasting solution to the implementation of the provisions of Chapter VII of the Charter concerning assistance for third States affected by the application of sanctions. The latter should be imposed only as a last resort in cases of a genuine threat to peace, a breach of the peace, or an act of aggression, if all the means of arriving at a peaceful settlement of disputes provided for in Chapter VI of the Charter had been exhausted and after the economic, social and humanitarian effects of those sanctions in both the short and the long term had been carefully assessed. Sanctions regimes must have clearly defined purposes. They must be reviewed and immediately suspended or lifted when their aims had been reached. Any attempt to use sanctions to completely change or modify the political or legal system of a country was illegal and a violation of international law.

55. Her delegation endorsed the proposal to set up a working party within the Sixth Committee to study the working paper submitted by the Russian Federation on the basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations (A/C.6/62/L.6).

56. Conflict prevention was of prime importance, but special attention should likewise be paid to resolving disputes by fostering agreement between the parties by whatever method appeared most suitable. Cuba's working paper entitled "Strengthening of the role of the Organization and enhancing its effectiveness" sought to boost the General Assembly's role in safeguarding international peace and security, in the light of the fact that it was the Organization's main legislative and representative organ.

57. The publication of updated versions of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* would be very useful, as they formed part of the historical memory of the Organization and were a helpful research tool for experts.

58. It was crucial that States pulled together and displayed flexibility when discussing the important subjects handled by the Special Committee so as not to impede its work. Its limited progress was due to the lack of political will and not by any means the result of its working methods. Members should realize that deliberations in the Special Committee would help to strengthen the role of the Organization.

59. **Mr. Moreno** (Bolivarian Republic of Venezuela), acknowledging the outstanding role played by the United Nations vis-à-vis the challenges of sustainable economic development, human rights and international peace and security in a political, economic and social environment very different to that obtaining when it had been founded in 1945, at the end of the Second World War, said that the political processes which had led to the increase in the number of the Organization's Member States from 51 to 192 had put it on course to build a multipolar world in tune with reality. A correct reading of the current environment was the prerequisite for strengthening the Organization and promoting certain urgently needed changes such as the democratization of its institutions, the improvement of its working methods and respect for the competence of each principal organ and the dominant role of the General Assembly. Hence the main challenge facing the Organization was linked to its ability to serve the purposes for which it was founded; that meant that it should transform itself by casting aside inequalities between its Member States.

60. Sanctions should be seen not as a device for resolving conflicts or for punishing States, but as exceptional measures designed to curb threats to international peace and security. They should be selective, have clear objectives and strike a balance between efficacy, desired results and the harmful consequences they would have on the civilian population and third States. Efforts should therefore continue to reduce all adverse effects of sanctions on third States. The international community should show its solidarity by granting economic assistance to those States in order to minimize the economic repercussions of sanctions. An endeavour should likewise be made to mitigate the impact of sanctions on vulnerable groups of the civilian population of both targeted and third States. The way sanctions were being applied was evidence of the unbalanced composition of the Security Council, which had not yet been transformed or democratized and was overstepping its real competence.

61. The recommendations contained in the Special Committee's report (A/62/33) formed a good basis for future work on building a United Nations tailored to the realities of the twenty-first century.

62. **Mr. Mukongo Ngay** (Democratic Republic of the Congo) reaffirmed his delegation's view that sanctions should only be imposed in accordance with Chapter

VII of the Charter and only if all means for peaceful settlement of disputes had been exhausted. While supporting the idea of targeted sanctions, his delegation believed that due consideration must be given to the unintended consequences of such sanctions on civilian populations and third States. Case-by-case assessment was needed in order to determine what compensation for damages might be appropriate.

63. Concerning the sanctions imposed by the Security Council against the Democratic Republic of the Congo in 2004, his delegation maintained that the purpose of such measures should be to prevent the illegal exploitation of natural resources to finance the armed groups and militias that remained active in the eastern part of the country, not to prevent the legitimate Government from using the country's wealth for the good of the population.

64. With regard to the use of force, except in cases of self-defence or action taken at the initiative of the Security Council, his delegation could only condemn any coercive action carried out in violation of Chapter VI of the Charter. Military intervention could only be justified if all peaceful means of settling a crisis had been explored in accordance with Article 33 of the Charter. In that regard, he invited the Committee to recall paragraph 77 of the 2005 World Summit Outcome, which dealt with the use of force. He supported the proposal by Belarus and the Russian Federation to request an advisory opinion from the International Court of Justice concerning the legal consequences of the resort to the use of force without the prior authorization of the Security Council or outside the context of self-defence.

65. With respect to the *Repertory of Practice of United Nations Organs* and *the Repertoire of the Practice of the Security Council*, his delegation supported the recommendations put forward by the Secretary-General in his report (A/62/124) and commended the progress in making all language versions available on the Internet. He particularly welcomed the electronic posting of all previously published French versions of the *Repertoire*. Nevertheless, given the well-known digital divide between the countries of the North and those of the South, hard copies of all volumes of the two publications should remain available.

66. **Mr. Djédjé** (Côte d'Ivoire), speaking as the representative of a country which had been subjected to sanctions for three years, said that maintaining international peace and security by strengthening the role of the United Nations and enhancing its effectiveness was a priority. He wondered, however, whether sanctions, even when carefully targeted, really promoted the peaceful settlement of disputes. While the international community had obviously meant well in its endeavours to grapple with the Ivorian crisis and while the commitment and competence of those who had designed the unsuccessful response were not in doubt, their diagnosis had been questionable.

67. In what way had the political struggle waged by Charles Blé, Kouakou Fofié or Eugène Kouadio conflicted with the aims of the United Nations Charter, since each of them had been fighting for freedom? Although genuine steps towards national reconciliation were being taken, the very people responsible for those steps were being affected by United Nations sanctions. The question Ivorians were asking was whether those sanctions were intended to punish individuals or to restore peace in the country. Since the former belligerents were actively contributing to the establishment of lasting peace, what was the point of maintaining sanctions?

68. Sanctions should not be adopted or maintained when they would seriously hamper the post-conflict normalization process. It was regrettable that although some constructive proposals had been put forward, the Special Committee had achieved little progress on the adoption of the revised working paper submitted by the Russian Federation and entitled "Declaration on the basic conditions and standard criteria for the introduction and implementation of sanctions and other coercive measures". The adoption of that working paper was still one of the principal tasks to be completed by the Special Committee. He therefore called on Member States to participate actively in informal consultations on the working paper.

69. Any application of sanctions should be in accordance with the Charter of the United Nations and with the pertinent provisions of international law and must meet objective and precise criteria. Sanctions must have clearly defined objectives and must never be imposed in order to exact punishment or retribution. Their purpose was to bring about a change in conduct in an individual or entity. Coercive measures must have precise deadlines, be periodically reviewed and be

lifted as soon as they had achieved their ends. He therefore welcomed the adoption of Security Council resolutions 1730 (2006) and 1735 (2006) which set out to establish fair and clear procedures for including or removing individuals from the lists of sanctions committees by creating a focal point to receive de-listing requests. No additional conditions should be imposed for the lifting of sanctions and more should be done to limit the unintended consequences they could generate.

70. **Ms. Adekumbi** (Nigeria) said that her delegation attached special importance to the work of the Special Committee and the efforts regarding the provision of assistance to third States affected by the application of sanctions. It also welcomed the shift in focus in the procedures and working methods of the Security Council and its sanctions committees with respect to targeted sanctions.

71. Her delegation had noted the information in paragraph 14 of the Secretary-General's report (A/62/206) regarding targeted sanctions and the absence of any appeals for remedy or relief since 2003. Nevertheless, her Government believed that there was a need for further enlightenment about the processes and procedures to be followed by third States in obtaining relief, and she therefore urged the Secretariat to continue to compile and disseminate information on the topic.

72. Even targeted sanctions devastated the lives of ordinary citizens, in both targeted and third countries. Sanctions should therefore only be applied in accordance with the Charter and international law. They should be used only as a last resort after all means of peaceful resolution of disputes had failed; they should only remain in effect for a specified period; and their impact should be continuously monitored.

73. **Mr. Lamine** (Algeria), reiterating his delegation's position on the matter of sanctions, said that such measures should only be imposed if the Security Council had determined that a real threat to the peace, breach of the peace or act of aggression existed, and they should be a last resort, after all peaceful means of dispute settlement had been exhausted. Sanctions should be periodically reviewed and should be lifted as soon as they had fulfilled their purpose. Furthermore, sanctions should only be imposed within the framework of the United Nations. His delegation underscored its disapproval of the continuing trend towards the imposition of unilateral sanctions by some States or groups of States. Unilateralism was counter-productive and detrimental to collective action by the United Nations.

74. His delegation reiterated its firm support for the revised working paper submitted by the Russian Federation on the subject (A/C.6/62/L.6) and requested that it be discussed by a working group of the Sixth Committee. Regarding third States affected by the application of sanctions, his delegation believed that Article 50 of the Charter, could not be interpreted as being of a purely procedural nature. Providing assistance to third States made it easier for them to respect the sanctions imposed, which in turn made the sanctions more effective.

75. Algeria wished to see continued discussion of the working papers submitted by Cuba on strengthening the role of the Organization (A/AC.182/L.93 and Add.1), particularly with respect to revitalizing of the work of the General Assembly with a view to restoring its rightful role as the chief deliberative, policymaking and representative body of the United Nations. On the issue of maintenance of international peace and security, his delegation continued to support the proposal submitted by Belarus and the Russian Federation (A/AC.182/L.104/Rev.1) to request an advisory opinion from the International Court of Justice as to the legal consequences of the resort to the use of force without the prior authorization of the Security Council or outside the context of self-defence. It was to be hoped that a consensus on the issue would be reached so that the General Assembly might proceed to request an opinion from the Court, in accordance with paragraph 96 of the Charter.

76. Lastly, his delegation appreciated the Secretariat's efforts to ensure regular publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and encouraged it to continue those efforts.

77. **Mr. Tugio** (Indonesia) said that the United Nations, as the supreme symbol of the unity of the international community, could be very useful to Member States in the achievement of their multilateral objectives, but only if it was appropriately strengthened and positioned to enable it to discharge its responsibilities effectively. For Indonesia, the most important issues in that regard were democratizing the

principal organs of the United Nations, establishing the primacy of the General Assembly and ensuring balance in the authority and responsibilities of the principal organs, as mandated by the Charter. With particular reference to the General Assembly, strengthening it meant finding ways to make it both efficient and effective.

78. His delegation considered it vital to consider the legal implications of the United Nations reform process. It was also important to acknowledge the role of the International Court of Justice in the overall structure of the United Nations, particularly in the peaceful adjudication of disputes among States. The Court continued to be a major asset where the principal organs had different interpretations with regard to their respective Charter mandates. His delegation saw the merit of the proposal by Belarus and the Russian Federation concern the request for an advisory opinion from the Court concerning the resort to force by States without prior authorization from the Security Council.

79. Regarding the imposition of sanctions, Indonesia had always held that sanctions must be an instrument of last resort, not to be used unless all means of peaceful settlement of disputes had been exhausted. It could not be stressed enough that sanctions should not victimize the people they were intended to help, and their negative effects on third States and their people should be minimized or eliminated. It was the responsibility of the Security Council to ensure, before sanctions were imposed, that they would not make life unbearable for the vulnerable. If sanctions were required, they must be clearly defined. They must also be routinely reviewed, according to a set of predefined criteria, and lifted either as soon as they were perceived to have achieved their objectives, or as soon as institutional review revealed them to be hurting the vulnerable.

80. His delegation was pleased with the progress being made in the preparation of the *Repertory of Practice of United Nations Organs* and related studies and the updating of the *Repertoire of the Practice of the Security Council* and supported the efforts of the Secretary-General to enhance their quality and make them available electronically in the various language versions.

81. **Ms. Mohd. Nurdin** (Malaysia) stressed that the United Nations should remain the primary forum for ensuring the maintenance of international peace and security based on the principles of the Charter and international law. Malaysia welcomed the papers submitted by various delegations aimed at reaching that objective. Malaysia recognized the important role of the International Court of Justice in adjudicating disputes among States, which should avail themselves of that facility to seek the peaceful settlement of disputes and avoid the use or the threat of use of force. Malaysia supported the proposal by Belarus and the Russian Federation to seek an advisory opinion from the Court on the legal consequences of the use of force, believing that such an opinion would contribute to uniform interpretation and application of the relevant provisions of the Charter.

82. With regard to the revised Working Paper submitted by the Russian Federation in February 2007 (A/AC.182/L.114/Rev.2), Malaysia agreed that the impact of sanctions on third States needed careful consideration to avoid unintended consequences and implementation difficulties. Sanctions should only be considered after all means of peaceful settlement of disputes had been exhausted and thorough consideration had been given to their short- and long-term effects. Sanctions should be monitored effectively, with clear benchmarks, and should be periodically reviewed. They should remain in effect for as short a period as possible and should be lifted once their objectives had been achieved. The conditions demanded of the country or party on which sanctions were imposed should be clearly defined and subject to periodic review. Attempts to impose or to prolong the application of sanctions to achieve political ends should be rejected.

83. Monitoring by the Security Council or by its subsidiary organs should not be done for the purpose of targeting particular States. Malaysia was concerned that such arbitrary targeting might also be done under the guise of providing "technical assistance". Based on its experience in implementing certain Security Council resolutions, Malaysia suggested that implementation guidelines should be issued or a means of seeking clarification provided. In relation to Security Council resolutions 1737 (2006) and 1747 (2007), she noted that provision was made to deal with non-compliance by implementing States, but the consequences were unclear. Malaysia believed that such operating procedures needed further scrutiny and care in drafting.

84. Concerning the working paper submitted by the Libyan Arab Jamahiriya on sanctions (A/AC.182/L.110/Rev.1), Malaysia has no objection to the consideration of that paper in the Special Committee if it was determined to be within that Committee's terms of reference. Malaysia strongly advocated strict adherence to all Charter and international law criteria in the imposition of sanctions, in particular the right of targeted States to be heard well before sanctions were applied, and supported the call for transparent decision-making to ensure the legitimacy of the actions taken, including any taken under Chapter VII of the Charter.

85. **Mr. Rodger Young** (United States of America) commended the Secretary-General's efforts to reduce the backlog in preparing the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council.*

86. With regard to the discussions by the Special Committee of various proposals concerning sanctions, his delegation had said previously that it did not believe that the Special Committee should aim to devise norms relating to the design and implementation of sanctions because such action would be duplicative or inconsistent with the roles of the principal organs of the United Nations as set forth in the Charter, in particular Article 24. Some Member States continued to assert that Article 50 of the Charter required the Security Council to take action to assist third States affected by the imposition of sanctions. The United States wished to reiterate its long-held view that while the consultations envisaged in Article 50 provided a mechanism to discuss the effects of sanctions on third States, that Article did not require the Council to take any specific action.

87. In that regard, his delegation welcomed the Secretary-General's report (A/62/206), which indicated that, during the period under review, there had been no consultations by Member States to express concerns about special economic problems resulting from the imposition of sanctions. Since targeted sanctions had substantially minimized unintended economic consequences for States, his delegation saw no reason to consider establishing a fund financed from assessed contributions or through some other Organization-based financial arrangement in order to address an abstract concern. Moreover, as the report indicated, the Security Council had taken steps to mitigate economic burdens on targeted individuals arising from a decision to freeze assets, allowing exceptions whereby States could authorize access to frozen funds for a variety of basic and extraordinary expenses.

88. It was a priority of the United States to ensure that the lists of individuals and entities targeted by the Security Council for sanctions were as accurate as possible and that the process was fair and clear. His delegation therefore welcomed the adoption of Security Council resolution 1730 (2006), particularly provisions relating to the establishment of a focal point in the Secretariat to receive de-listing requests.

89. His delegation had noted with interest the proposals of several Member States regarding new subjects that might warrant consideration by the Special Committee. With respect to the proposal on "Consideration of the legal aspects of the reform of the United Nations", the United States agreed that, as appropriate, the Special Committee might have a technical role to play in matters relating to the implementation of any decisions to amend the Charter of the United Nations. However, it would be helpful to receive additional detail about the proposal before the Special Committee met in 2008.

90. Lastly, his delegation did not support the proposal that the General Assembly should request an advisory opinion from the International Court of Justice on the legal consequences of the use of force, as the matter was adequately and clearly addressed in the Charter.

91. **Mr. Shautsou** (Belarus) said that the Special Committee was the appropriate body to study the whole spectrum of issues related to the reform of the United Nations system, as provided for in General Assembly resolution 3499 (XXX).

92. Sanctions were the strongest coercive measures for bringing pressure to bear on a transgressor State and they must be adopted only when other political means of settling conflicts threatening international peace and security had been exhausted. Since precise and unambiguous criteria must be laid down for the introduction and implementation of sanctions, he welcomed the Russian Federation's proposal that a working group should be set up to study the working paper on the basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations (A/C.6/62/L.6).

93. When adopting sanctions, the essential aim was to ensure that they were accurately targeted and highly

effective. They must end as soon as their purpose was achieved. The objective assessment of their possible consequences, including their repercussions on third States, was no less important. Assistance for third States affected by the application of sanctions introduced under Chapter VII of the United Nations Charter would promote the effective, full-scale compliance of the international community with Security Council sanctions. For that reason, it was vital that the Special Committee should continue its work on that question, including within the ad hoc expert group on assistance to third States affected by sanctions. Wider use of the Special Committee's findings should be made in the practice of the Economic and Social Council, the Security Council and other United Nations bodies.

94. His Government was prepared to discuss any proposals concerning the joint recommendation of his country and the Russian Federation that an advisory opinion should be sought from the International Court of Justice as to the legal consequences of the resort to the use of force by States without the Security Council's prior authorization, except in the exercise of the right to individual or collective self-defence, in order that the Special Committee could agree on a text for submission for the General Assembly's consideration.

95. **Mr. Mikanagi** (Japan) said that although measures had been adopted in 2006 with a view to improving the working methods of the Special Committee, Japan was not satisfied with the Special Committee's current status and believed that further improvements should be considered. Any proposals for the addition of new items must be carefully examined in accordance with the adopted working methods, which set out strict rules on the matter. Moreover, the Sixth Committee must ensure that its discussion of the Special Committee's report was conducted as efficiently as possible. Given the many important issues before the Committee, and the delay that it was experiencing in implementing its programme of work, it should not spend too much time on the current item.

*The meeting rose at 12.55 p.m.*

*The meeting was called to order at 10.10 a.m.*

**Agenda item 85: Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization** (*continued*) (A/62/33, A/62/124 and Corr.1, A/62/206 and Corr.1; A/C.6/62/L.6)

1. **Mr. Kuzmin** (Russian Federation) said that the Russian Federation attached particular importance to the work of the Special Committee, which was one of the most important forums established by the General Assembly to discuss the Organization's legal problems. At the Special Committee's 2007 session, the Russian Federation had submitted a revised version of its working paper, entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations" (A/AC.182/L.114/Rev.2), taking into account the most recent documents elaborated by the General Assembly and the Security Council. The aim of the working paper was to regulate the basic conditions for the introduction and implementation of sanctions, develop a mechanism for the mitigation of their unintended humanitarian consequences and strengthen the legal basis for the implementation of sanctions by States. A further revised version of the working paper, contained in document A/C.6/62/L.6, had been prepared on the basis of the Special Committee's discussions for possible adoption by the General Assembly as an annex to a resolution. It could thus become an important contribution of the Assembly to the regulation of sanctions regimes. His delegation proposed that a working group of the Sixth Committee should be established for further discussion of the working paper.

2. The Russian Federation also attached great importance to the issue of assistance to third States affected by the application of sanctions. Regrettably, as in previous years, the report of the Secretary-General on the subject (A/62/206 and Corr.1) showed that the Organization had made little effort to deliver such assistance. The report submitted by the Secretary-General at the sixty-first session of the General Assembly (A/61/304) had referred to modalities and procedures relating to international assistance available to third States affected by the implementation of sanctions. However, the only information provided in response to the General Assembly's request for information on those modalities and procedures had related to research carried out in the 1990s. It therefore seemed clear that no such modalities or procedures existed. Moreover, the report submitted at the current session (A/62/206) did not state whether the Secretariat had made the envisaged modifications to the procedure for assessing the humanitarian consequences of sanctions; nor did it provide any information on the outcome of any such modifications. The Special Committee should therefore continue to pay close attention to the issue, and the Secretariat should organize a briefing on it at the Special Committee's next session.

3. The *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* were valuable repositories of institutional memory. However, despite the progress made in the publication of volumes of both the *Repertory* and the *Repertoire*, their financing remained a difficult issue. In that connection, the Russian Federation had made a contribution to the trust fund for the updating of the *Repertoire*. With regard to the use of interns and outside experts and cooperation with research institutions in the work on the publications, the Russian Federation realized that such measures were unavoidable but felt that a number of issues should be taken into consideration. The system of involving outside experts and institutions had to be transparent and equitable, and all Member States must have the opportunity to participate. His delegation would like to receive more information on cooperation between States and the Secretariat in that regard. Also, it was important not to forget that the Secretariat bore responsibility for the quality of the two publications. The principles laid down in 1952 regarding work on the *Repertoire* should be strictly adhered to.

4. Lastly, the Russian Federation supported the proposal made by the Dominican Republic on behalf of the Rio Group that a new item entitled "Consideration of the legal aspects of the reform of the United Nations" should be included on the Special Committee's agenda.

5. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran) said that his delegation continued to support the work of the Special Committee, which had made important contributions to the promotion of the purposes and principles of the Charter of the United Nations. The fact that lack of political will on the part of a few States had prevented the Special Committee from fulfilling its mandate should not be allowed to undermine its work. His delegation supported

initiatives aimed at revitalizing the Special Committee and enhancing its efficiency.

6. The maintenance of international peace and security, which was one of the main purposes of the United Nations, was dependent on the fulfilment by Member States, especially the big powers, of the dual obligations to refrain from the threat or use of force and to adhere to pacific means of settlement of disputes. The increasing resort by certain powers to the threat or use of force as an instrument of foreign policy not only jeopardized the basic tenets of Charter-based international law but also posed an unparalleled threat to international peace and security.

7. The Security Council had the primary, but not exclusive, responsibility for the maintenance of international peace and security. It should fully observe the relevant provisions of the Charter and related resolutions regarding the mandate of the General Assembly as the chief deliberative, representative and policymaking organ of the United Nations. The Assembly should play a key role in addressing issues related to the maintenance of international peace and security, and his delegation fully supported the proposals of Cuba in that regard. The work of the Special Committee on enhancing the role of the Assembly in that area was also of the utmost importance. In that context, the Committee should address the issue of the encroachment of the Council on the powers and mandate of the General Assembly.

8. The legitimacy and legality of the Security Council's decisions were to be gauged in terms of their compatibility with the purposes and principles of the United Nations, in accordance with Article 24 of the Charter. In other words, the Security Council did not have boundless discretionary power to impose sanctions on an arbitrary basis. Member States had every right to insist that the Council should keep within the powers accorded to it under the Charter. In practice, however, certain permanent members of the Council had tried on many occasions to use it as a tool for advancing their own political agendas, for example through the application of coercive measures such as economic sanctions. That issue should be addressed on the basis of a thorough discussion of the working paper submitted by the Russian Federation in document A/C.6/62/L.6. His delegation welcomed the proposal to establish a working group for that purpose.

9. The Security Council should be held accountable for the imposition of sanctions on the basis of pure speculation or under political pressure from certain permanent members. States that were the target of unlawfully imposed sanctions should have the right to be fully compensated for any damage caused. In that regard, his delegation supported the revised working paper submitted by the Libyan Arab Jamahiriya on the strengthening of certain principles concerning the impact and application of sanctions (A/AC.182/L.110/Rev.1). Moreover, the International Law Commission should take due account of the issue of the legal consequences of unlawful sanctions in its work on the responsibility of international organizations.

10. The Islamic Republic of Iran was seriously concerned about the unilateral imposition of economic sanctions by some States or a group of States on certain developing countries in an attempt to coerce the latter into submitting to their will. Such unilateral action as an instrument of foreign policy was contrary to international law, international humanitarian law and human rights, particularly the right to development.

11. The proposal made by Belarus and the Russian Federation to request an advisory opinion from the International Court of Justice as to the legal consequences of the resort to the use of force by States without prior authorization by the Security Council highlighted the critical situation caused by frequent resort to unilateral armed force. The Charter prohibited the threat or use of force by Member States in their international relations and provided for the right of self-defence only if an armed attack occurred. Those principles had been reaffirmed in various judgments of the International Court of Justice. Regrettably, however, they had been disregarded by certain powers, which had waged war and attacked other States on the pretext of defending themselves against perceived threats that had never existed. An advisory opinion from the Court could help strengthen the principle of the non-use of force or threat of force. For that reason, his delegation, along with many others, supported the proposal to request such an opinion.

12. Lastly, his delegation commended the Secretariat for its efforts to reduce the backlog in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council.*

13. **Mr. Muchemi** (Kenya) said that Kenya attached great importance to the work of the Special Committee and was committed to the principle of peaceful settlement of disputes. The imposition of sanctions should be considered only as a last resort when all peaceful means of dispute settlement had been exhausted. His delegation, like many others, was concerned that the work of the Informal Working Group of the Security Council on General Issues of Sanctions had been terminated before the Group had fulfilled its mandate. That step would undoubtedly impact on the Security Council's relationship with other organs of the United Nations and with Member States.

14. The United Nations sanctions regime played a crucial role in the maintenance of peace and security. However, where sanctions became necessary, they should be targeted in support of clear objectives and implemented in a balanced way. There should also be well-defined, fair and transparent criteria and procedures for the imposition, administration and lifting of sanctions, including options for mitigating possible adverse effects.

15. His delegation welcomed the various initiatives adopted with a view to streamlining the sanctions regime, in particular the continued recourse by the Security Council to targeted sanctions. It urged increased use of prior assessment of the likely unintended impact of sanctions, as well as ongoing assessment of actual unintended impact, both on the target State and on affected third States. Enhanced coordination and cooperation between the relevant United Nations organs would greatly help to improve the sanctions regime. Moreover, the Security Council should be broadened by taking into account proposals from Member States that had long been on the table. The sanctions regime was effective only when Member States acted in unison. His delegation therefore encouraged States to avoid acting unilaterally in the imposition of sanctions, as such action would undermine the achievement of the desired effects of sanctions.

16. With regard to the peaceful settlement of disputes, his delegation encouraged the use of existing judicial mechanisms of the United Nations, such as the International Court of Justice.

17. Lastly, his delegation welcomed the conclusions of the report of the Secretary-General on the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* (A/62/124 and Corr.1).

18. **Mr. Al-Sheikh** (Yemen) said that sanctions should always be a last resort and applied in accordance with strict standards. The Russian Federation's revised working paper entitled "Basic conditions and standard criteria for the introduction and implementation of sanctions imposed by the United Nations" was a notable improvement over previous versions and constituted a good jumping off point for discussion. The unilateral imposition of sanctions was a concern. The imposition of sanctions on individuals should be done transparently and on the basis of clear evidence. Many States, including his own, had found themselves unable to find out what their citizens whose names appeared on the sanctions committees' consolidated lists had been accused of. His delegation called for the establishment of new de-listing guidelines.

19. Yemen was committed to the settlement of border issues with its neighbours through peaceful means, in accordance with Article 2, paragraph 3, of the Charter of the United Nations, and it appreciated the role of the International Court of Justice in that regard. It also supported strengthening the role of the General Assembly, which represented all the States Members, in protecting international peace and security where the Security Council was unable to.

20. **Mr. Schenker** (Switzerland) welcomed the progress made in the publication of the *Repertory of Practice of United Nations Organs* and the *Repertoire of the Practice of the Security Council* and expressed support for the recommendations in that regard contained in the report of the Special Committee (A/62/33, para. 56).

21. Switzerland had long been actively involved in discussions on the issue of sanctions and had always argued in favour of targeted and effective sanctions that did not affect civilian populations. Together with Germany and Sweden, it had launched an initiative in 2006 aimed at guaranteeing a fair and transparent procedure for the inclusion of persons and organizations on sanctions lists and for their de-listing. As a result, progress was being made towards greater respect for the rights of targeted persons. In that regard, his delegation welcomed the adoption by the Security Council of resolutions 1730 (2006) and 1735

(2006) and the establishment of a focal point to receive de-listing requests pursuant to resolution 1730 (2006).

22. Nonetheless, further steps should be taken to safeguard the basic principles of the rule of law, and Switzerland intended to continue its activities in that regard. In November 2007, it would be organizing a round table jointly with Denmark, Liechtenstein and Sweden for further discussion of such issues. Many of the proposals in the revised working paper (A/C.6/62/L.6) were also contained in the document put forward by the "S5" group (Costa Rica, Jordan, Liechtenstein, Singapore and Switzerland) on the working methods of the Security Council.

23. Issues of human rights and international humanitarian law should always be taken into account in decisions relating to sanctions. For that reason, Switzerland attached particular importance to targeted sanctions, so as to minimize the impact on civilian populations. His delegation welcomed the revised working paper, which contained many interesting elements that were in line with Switzerland's own initiatives. Nonetheless, it was vital to avoid weakening the effectiveness of the sanctions regime put in place by the Security Council.

24. **Mr. Falouh** (Syrian Arab Republic) said that his delegation wished to express its extreme concern over the double standards applied in the imposition of sanctions and the enormous escalation of recourse to sanctions that had taken place, so that they had come to be used more than at any time in the past, often distorting the spirit and letter of the Charter.

25. Recourse to sanctions was permissible under Chapter VII of the Charter of the United Nations only in specific cases involving a clear violation of the Charter and of international law, and then only after all means available under Chapter VI had been exhausted. The founders of the United Nations had intended that to be the case in order that such sanctions should not prove counterproductive or have other adverse effects, not only with regard to the country against which the sanctions were imposed, but also for third countries that might be adversely affected, directly or indirectly, as a result of them.

26. His delegation welcomed the extremely important paper submitted by the delegation of the Russian Federation, which deserved support and study because it comprised numerous elements that would contribute to the creation of a sanctions regime that was more just and better realized the goals of the Organization.

27. His delegation also supported the proposal submitted by Belarus and the Russian Federation to request a ruling by the International Court of Justice on the legal consequences of the resort to the use of force by States without prior authorization by the Security Council, except in the exercise of the right to self-defence. General support for the proposal had been noted among the members of the Special Committee, with the notable exception of one State.

28. His delegation hoped for a reform of the Security Council in the near future, with expanded membership and greater democracy and transparency in the Council's working methods. It also supported the revitalization of the role of the General Assembly, the Organization's major deliberative, legislative and executive body, to enable it better to perform the tasks entrusted to it by the Charter.

29. **Mr. Malpede** (Argentina) noted that the representative of the United States of America and others had suggested at the previous meeting that the question of unintended economic consequences of sanctions had become an abstract concern following the adoption by the Security Council of resolutions 1730 (2006) and 1735 (2006) and the application of targeted sanctions. While it was true that the sanctions regime had been improved, especially with regard to the procedure for listing and de-listing, his delegation believed that from a legal standpoint much remained to be done, particularly with respect to basic issues relating to due process and the rule of law. The Sixth Committee, as the organ of the General Assembly that dealt with legal matters, could not fail to address those issues. The matter should also be discussed by the Special Committee on the Charter at its next session.

30. **The Chairman** invited the Committee to consider the proposal by the Russian Federation that its revised working paper (A/C.6/62/L.6) should be examined by a working group.

31. **Mr. Madureira** (Portugal), speaking on behalf of the European Union, thanked the Russian Federation for the work it had put into the revised working paper. The European Union was greatly concerned with the question of sanctions and had been actively involved in discussions on the issue, both within the United Nations, including during the deliberations of the Special Committee on the Charter and in other forums.

However, the Sixth Committee was already finding it difficult to accommodate all the important issues before it in its programme of work, and taking up the question of sanctions in a working group might leave too little time for the discussion of other crucial issues, in particular that of the administration of justice. Therefore, the European Union could not support the proposal to convene a working group during the present session to discuss the working paper.

32. **Mr. Kuzmin** (Russian Federation) thanked all the delegations that had expressed support for his country's working paper and for its proposal to set up a working group. He had listened carefully to the comments made by the delegate of Portugal on behalf of the European Union and acknowledged that the Sixth Committee had a very heavy agenda. His delegation therefore requested that the Committee consider the possibility of organizing an informal meeting during the current session to discuss the working paper submitted by his Government.

33. **Mr. Eriksen** (Norway) and **Ms. Wilcox** (United States of America) concurred with the statement made by the delegate of Portugal on behalf of the European Union and, while expressing appreciation to the Russian Federation for its efforts in preparing the revised working paper, said that their delegations would need to consult with their respective capitals before they could agree to discuss the paper in either a working group or an informal meeting.

34. **Mr. Lamine** (Algeria), **Mr. Shautsou** (Belarus), **Mr. Wang** Chen (China), **Ms. Negm** (Egypt), **Mr. Medrek** (Morocco), **Mr. Win** (Myanmar), **Mr. Thomas** (Namibia), **Ms. Nworgu** (Nigeria), **Mr. Shah** (Pakistan), and **Mr. Al-Sheikh** (Yemen) supported the idea of holding informal consultations during the present session to discuss the revised working paper on sanctions (A/C.6/62/L.6).

35. *It was so decided.*

*The meeting rose at 11.05 a.m.*

United Nations

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# Sixth Committee

## Summary record of the 10th meeting

Held at Headquarters, New York, on Friday, 19 October 2007, at 10 a.m.

*Chairman*: Mr. Tulbure .......................................................... (Moldova)

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*The meeting was called to order at 10 a.m.*

**Agenda item 83: Diplomatic protection** (A/62/118 and Add.1)

1. **Mr. Adsett** (Canada), speaking on behalf of the CANZ group of countries (Canada, Australia and New Zealand), said that a large body of well-established State practice already existed with regard to much of the subject matter covered by the draft articles on diplomatic protection (A/61/10). Customary international law dealt extensively with the topic which had evolved as a result of State practice and the decisions of international courts and tribunals. While, in some cases, the modifications made by the International Law Commission to the preliminary drafts of the articles accurately reflected customary international law, in others they amounted to the progressive development of the law.

2. The CANZ group of countries, unlike some other States, was of the opinion that the concept of predominant nationality set out in draft article 7 did nothing to alter States' primary legal obligation to inform foreign nationals of their right to consular assistance.

3. It would be inadvisable to try to adopt a legally binding instrument on the topic at the current juncture. The draft articles, which had been drawn up within a very short time, might have far-reaching implications for Governments. Any attempt to elaborate a convention might therefore reopen the debate on the draft articles and quickly undermine the Commission's achievements in consolidating the topic. The value of the Commission's deliberations would be demonstrated over time as State practice evolved under the guidance of the Commission's work.

4. **Mr. Eriksen** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the draft articles on diplomatic protection were generally satisfactory, inasmuch as they struck a good balance between the codification and progressive development of international law in that field.

5. The General Assembly should therefore follow the International Law Commission's recommendation and adopt the draft articles in the form of a convention within a relatively short period of time, for the sake of greater legal clarity and predictability. Referring to the diverging views set out in the Secretary-General's report (A/62/118 and Add.1), he expressed the Nordic countries' readiness to consider any option which safeguarded the core elements of the draft articles.

6. **Mr. Serradas Tavares** (Portugal) said that the draft articles on diplomatic protection adopted by the International Law Commission were suitable material for an international convention, notwithstanding the disagreement his Government had voiced in earlier debates in the Sixth Committee with regard to the scope of the draft articles and the contents of draft articles 8, 11 and 12. An ad hoc committee should be set up within the Sixth Committee to discuss the subject matter in greater depth and to elaborate an international convention on diplomatic protection on the basis of the draft articles.

7. He hoped that two parallel conventions would be drawn up, one on diplomatic protection, the other on State responsibility for internationally wrongful acts, because the two topics traditionally went hand in hand. The adoption of twin conventions would consequently represent a major step towards the consolidation of the law on international responsibility.

8. **Ms. Allen** (Cuba) said that the draft articles on diplomatic protection were extremely valuable because they contributed to the codification and progressive development of international law by combining rules of customary international law with new norms which were not yet applied in a uniform manner.

9. The right established in draft article 1, namely that of a State to invoke, through diplomatic action or other means of peaceful settlement, the responsibility of another State for an injury caused by an internationally wrongful act of that State to a natural or legal person that was a national of the State invoking responsibility, constituted a guarantee that States would fulfil their international obligations with respect to the rights of foreign natural or legal persons present in their territory and would help to prevent the violation of those persons' rights. Diplomatic protection represented a substantial advance in the protection of the human rights and fundamental freedoms flowing from international law, especially since the draft articles extended the application of such protection to refugees and stateless persons.

10. The draft articles on diplomatic protection were closely linked to those on the responsibility of States for internationally wrongful acts because the purpose of diplomatic protection was to defend the rights of

persons against a foreign State's wrongful act, as defined in the draft articles on State responsibility. That was why they were of equal importance as means of contributing to greater compliance with international law.

11. Her Government was in favour of drafting a convention based on the draft articles on diplomatic protection, for that would help to clarify norms, update international law and codify generally accepted practice stemming from the case law of the International Court of Justice and State practice. Nevertheless, in order to arrive at a broad consensus, it would be advisable to consider the draft articles in a working group within the framework of the Sixth Committee which could finalize the details and polish the text.

12. **Ms. Valenzuela Díaz** (El Salvador) said that the topic of diplomatic protection had to be seen in the wider context of the responsibility of States for internationally wrongful acts and that was why the same course of action should be taken on both sets of draft articles.

13. The International Law Commission's amendments to the preliminary versions of the draft articles had brought the latter more closely into line with customary international law, although some draft articles, especially draft article 8 concerning the diplomatic protection of stateless persons and refugees, constituted progressive development. Despite the fact that the commentaries clearly showed that there was a considerable body of established State practice on most of the questions covered by the draft articles, more time for their analysis and consideration was required before the adoption of a draft convention based on them. Additional reflection on the text would make for a better outcome and, for that reason, she recommended that the subject should be kept on the General Assembly's agenda.

14. **Ms. Rodríguez-Pineda** (Guatemala) said that, while her Government was not opposed to the idea of a convention on diplomatic protection, it was of the opinion that the content of the draft articles required more thorough consideration. Diplomatic protection concerned a very delicate area of international relations where a foreign State's interest in protecting its nationals collided with the rights of the territorial sovereign. She therefore recommended the setting up of a working group within framework of the Sixth Committee to examine the text of the draft articles particularly with respect to the following aspects: State practice and its evolution in keeping with international case law; the interaction which should exist between diplomatic protection and the substantial progress which had been made towards the international protection of human rights; the exhaustion of local remedies and any exceptions to that rule, in particular denial of justice which, under the Salvadorian Constitution, did not occur simply because a court decision was contrary to the interests of the allegedly injured party; the discretion of the protector State and the need to make sure that political considerations did not influence any decision on whether or not to grant diplomatic protection which should be regarded as a legal and not a political act and, lastly, other forms of complementary action which might be pertinent when diplomatic protection was not feasible.

15. **Mr. Moreno** (Bolivarian Republic of Venezuela) acknowledged the efforts made to take into account the differences and overlaps between diplomatic protection and consular assistance and the requirement of continuous nationality from the date of injury to the date of the official presentation of the claim. He appreciated the distinction made between the legal status of corporations and that of their shareholders for the purposes of seeking diplomatic protection against internationally wrongful acts committed by a State and welcomed the inclusion in the draft articles of the rule of exhaustion of local remedies as a requirement for the exercise of diplomatic protection.

16. Draft article 1 attached excessive importance to nationality as a basic requirement for the exercise of diplomatic protection, thereby discriminating against stateless persons and refugees. For that reason, his delegation regretted the discarding of earlier proposed drafts that had included, in addition to nationals, the persons specified in draft article 8.

17. Similarly, it had reservations in regard to the content of draft article 19, which treated diplomatic protection not only as a right of the State, but also as its possible duty. The wording adopted was not usual in an instrument whose primary purpose was, by definition, to codify international custom or case law and doctrine as a peremptory norm. The mere inclusion of such a provision in a legal instrument diminished the status of custom as a source of law, since it clearly indicated which practice was considered desirable by the international community. The progressive

development of law would thus be diverted from its normal course by a legal rule laying down in advance a practice that would give rise to custom, regardless of what States actually did in that regard. The content of subparagraph (c) of that draft article was of concern in that connection, since, by being required to transfer to the injured person any compensation obtained, the State could be considered to be not acting in the higher interest of the nation. He quoted a ruling by the Permanent Court of Justice in the *Mavrommatis Palestine Concessions* case to the effect that by defending its own subjects, the State asserted its own right. Assuming that in exercising that right the State would not be acting solely on behalf of the individual but also in the national interest: it should be able to determine the use to be made of the compensation to benefit the nation and not a particular person.

18. **Mr. Ma** Xinmin (China) said that, since major differences existed among Member States as to the final form which should be taken by the draft articles on diplomatic protection, the General Assembly should not take an immediate decision, but should place the topic on the Sixth Committee's agenda triennially.

19. The provisions of draft article 6 might in practice lead to a situation where several States of nationality might exercise diplomatic protection successively on behalf of their national in respect of the same injury. As that would obviously be inappropriate, the draft articles should clearly specify that when one or several of the States of nationality of a person possessing dual or multiple nationality had already exercised diplomatic protection, the other State or States of nationality must not pursue diplomatic protection in regard of the same injury.

20. While agreeing with the principle established in draft article 14 that the exercise of diplomatic protection should be predicated on the exhaustion by the injured person of all local remedies in the State allegedly responsible for causing the injury, he was of the opinion that the State of nationality should not be prevented from taking the requisite diplomatic action in respect of an injury to its national, regardless of whether that person had exhausted local remedies. In that connection, he noted that diplomatic protection did not include other diplomatic action such as informal requests for corrective action, which did not entail the invocation of the legal responsibility of another State.

21. **Mr. Sandorski** (Poland) said that the draft articles did not provide sufficient elements of progressive development and codified customary rules in accordance with tradition. It might be considered questionable whether a State had an absolute right to decide whether or not to exercise diplomatic protection on its national's behalf and that, therefore, its nationals injured abroad had no right to such protection under international law. However, current developments in international human rights law, as reflected in a significant number of recently adopted national constitutions, required States to extend diplomatic protection to injured persons. By virtue, then, of State constitutional practice, the right to diplomatic protection had the character of international customary law, at least *in statu nascendi*. Moreover, his delegation considered that the right to communication with consuls was an important component of the right to diplomatic protection. Freedom of such communication was both essential to the exercise of consular functions and a fundamental guarantee of the human rights of aliens. It was therefore unacceptable that diplomatic protection should not be recognized as a human right and enforced as such, and that a distinction should be made between human rights and diplomatic protection.

22. Violation of the right to communication with consuls was particularly dangerous to the international legal order. Indeed, the right of a person deprived of freedom to be instantly informed about the possibility of being assisted by a consul was not only the right of an alien but formed part of the corpus of human rights, as recognized in a number of international judicial decisions and opinions. By the same token, the right to diplomatic protection also belonged to that corpus.

23. His delegation considered that the State of nationality had a legal duty to exercise diplomatic protection on behalf of an injured person upon request. Even without request, it was legally required to do so if the injury resulted from a grave breach by another State of *jus cogens* norms, notwithstanding that all States, and not just the State of nationality, were duty-bound to protect the individual in such cases. The State of nationality was often able to provide protection more swiftly and more efficiently than the international community. In any case, lack of a clear understanding of the meaning and scope of *jus cogens* should not prevent the International Law Commission from identifying peremptory norms of international law. Where there had been a grave breach of an obligation

of crucial importance for the fundamental interests of the international community, as in cases of torture and inhuman treatment, it could be contended, as it had been by the British Court of Appeal in the *Abbasi* case, that the State of nationality was legally bound to exercise diplomatic protection. In other than *jus cogens* cases, however, the State was under no obligation to exercise such protection if it would seriously endanger the overriding interests of the State. Should it decide for that reason not to exercise diplomatic protection, however, it should itself compensate for the damage suffered by its national.

24. His delegation considered that the draft articles were not yet ready to be given the form of a binding international instrument. The General Assembly should take note of them and commend them to the attention of Governments and postpone until a later date any decision on how next to proceed. In the meantime, States should continue to study them with a view to their being transformed into binding law, as and when appropriate.

25. **Mr. Alday** (Mexico) said that the work of the International Law Commission in the area of diplomatic protection accurately reflected the practice of States. Mexico concurred with the Commission's view that diplomatic protection was only one of various means of protecting the human rights and fundamental freedoms recognized under international law. For Mexico, safeguarding the rights of all Mexicans abroad was of the utmost importance, and diplomatic protection was therefore a central feature of its foreign policy.

26. His Government attached particular importance to the issue of exhaustion of local remedies. It was the duty of the State against which a claim was brought to show that local remedies had not been exhausted, and to specify which remedies remained open to the claimant.

27. As his delegation had said the previous year, Mexico supported the development of a convention on the basis of the draft articles. Such a convention would provide greater clarity and legal certainty and would help to harmonize the individual practice of States; it would also eliminate existing gaps and promote the updating of international law on the subject. His delegation believed that its preference for an international convention was justified by the tendency of States to minimize the value of "soft law", a mere declaration would not contribute sufficiently to the codification of international law on diplomatic protection.

28. Erroneous interpretations of the nature and scope of diplomatic protection had sometimes been used to justify wrongful acts, although the practice of States, reinforced by jurisprudence and doctrine, had brought greater clarity. Nevertheless, globalization made it more necessary than ever to ensure the existence of a legal order that established with total certainty the rights and duties of States with respect to their nationals abroad. The General Assembly should therefore take the necessary action to put in place a binding legal instrument that would codify and contribute to the progressive development of international law relating to diplomatic protection.

29. **Mr. Fitschen** (Germany) recalled that, in the Committee's discussion of diplomatic protection in 2006, his delegation had expressed the view that more in-depth discussion was needed before a decision was taken as to whether or not the draft articles could be adopted in the form of a convention. It was in that sense that he joined the current debate. He wished to underline once again that diplomatic protection was a right of States, not of individuals, and that it was a right, not a duty. Even where a State might, under its own constitution, have an obligation to exercise diplomatic protection in favour of a national, international law left that State a large margin of discretion as to how to do that. Any future codification of the law of diplomatic protection should not attempt to go beyond that well-established rule.

30. If the Committee opted to proceed with the drafting of a convention based on the draft articles, more thought should be given to the question of the genuine link between the individual and the State which had the right to exercise diplomatic protection. In the current globalized world, more and more people lived abroad for extended periods or moved repeatedly between countries. Under such circumstances, the initial link with their country of nationality might be weakened to the extent that it could no longer be considered genuine. Moreover, it was sometimes not easy to determine precisely which country might or might not exercise diplomatic protection for an individual in need. A future convention would need to take account of that feature of modern times. Lastly, if a convention were to be drawn up, draft article 19 would need to be revisited. A legally binding

convention had to be cast in terms of rights and obligations, rather than recommendations, if it was to serve its purpose.

31. **Mr. Omar** (Malaysia) noted that Malaysia had already expressed its support for the development of an international convention on the basis of the draft articles on diplomatic protection. That support was largely premised on his Government's constant commitment to ensuring that Malaysian nationals abroad were humanely treated and to upholding its right to protect its nationals from injuries suffered as a result of internationally wrongful acts of other States. That right was a sovereign prerogative of States, to be exercised entirely at their discretion.

32. Having had the opportunity to reflect on the mixed reactions of some Member States to the idea of a convention, Malaysia wished to reiterate its willingness to work with the international community in the noble effort to enhance legal clarity and predictability with respect to international law on diplomatic protection. Malaysia appreciated and understood the concerns of some States with regard to the manner and timing of drawing up a legally binding convention and emphasized the importance of taking into account the views of all States, particularly those in the developing world.

33. Malaysia aligned itself with the position taken by many Member States on the close connection between the draft articles on diplomatic protection and those on responsibility of States for internationally wrongful acts. Indeed, the drafting of articles on diplomatic protection had begun as part of the study on State responsibility and the two sets of articles would necessarily remain closely linked. Therefore, the question of developing an international convention on diplomatic protection should be considered in tandem with that of developing a convention on State responsibility.

34. Malaysia noted with concern the provision of draft article 8 regarding the right of a State to afford diplomatic protection to stateless persons and refugees. Malaysia was not a party to any treaty relating to stateless persons and refugees and therefore was not bound to accord anyone such status. Further, Malaysia did not have specific national legislation concerning refugees, who were dealt with in accordance with the country's immigration laws.

35. The text of the draft articles on diplomatic protection had been made available to Member States fairly recently, and many States had therefore probably not had sufficient time to consider them thoroughly. Malaysia concurred with the view that a period of further reflection on the draft articles should be allowed before the question of developing a convention was taken up.

36. **Mr. Bühler** (Austria) said that his Government's position on the question of a convention on diplomatic protection remained unchanged: Austria was not convinced of the usefulness of embarking immediately on the development of a convention. States needed to have sufficient time to reflect on the draft articles. Austria would therefore prefer to defer further discussion of whether to draft a convention and how to do so (e.g., by establishing an ad hoc or preparatory committee or by convening a codification conference) for a few years.

37. **Ms. Naidu** (South Africa) said that South Africa welcomed the finalization of the draft articles on diplomatic protection but was concerned that their scope went beyond the codification of existing international law and beyond the protection that States were willing or able to offer — particularly draft article 19, which created a legal right to diplomatic protection. Nevertheless, her delegation favoured the negotiation of a convention on the basis of the draft articles and hoped that work towards that end would proceed during the current session.

38. **Mr. Mikanagi** (Japan) said that his delegation welcomed the draft articles on diplomatic protection as a useful document which reflected customary international law on the subject. While some of the draft articles included provisions that might further progressive development of the law, others seemed premature. In particular, draft articles 8 and 19 did not seem consistent with customary international law. The International Court of Justice had made reference to the draft articles in its judgment on the preliminary objections in the case concerning Ahmadou Sadio Diallo, which could be interpreted as a sign of positive recognition. However, at the current stage it was not clear how useful the articles would be as guidelines for the practice of States and others involved in the exercise of diplomatic protection. Japan therefore considered it premature to consider drafting a convention. As others had suggested, five years might be an appropriate time for reflection, which would

mean that the Committee would discuss the issue again in 2012.

39. Mr. Rodger **Young** (United States of America) said the International Law Commission need take no further action on the topic of diplomatic protection. The United States welcomed the Commission's efforts to revise the draft articles so that they more accurately reflected customary international law and to clarify their contribution to progressive development of the law. It also welcomed the Commission's efforts to clarify that diplomatic protection was a sovereign prerogative of States and an important component of bilateral diplomacy.

40. His delegation was concerned, however, that the draft articles on a few topics, including continuous nationality, extinct corporations, the protection of shareholders, and recommended practice (draft article 19), deviated from customary international law without a sufficient public policy rationale. For that reason, and because there was a large body of well-established State practice pertaining to those issues, the United States would be opposed to any effort to move towards a diplomatic conference leading to the adoption of a convention on diplomatic protection. His Government, like others, feared that the negotiation of a convention could undermine the Commission's substantial work to date by reopening topics on which States had agreed, raising the risk that a significant number of States might not ratify a convention. The United States would, however, support the adoption by the General Assembly of a resolution taking note of the draft articles and attaching them, as had been done previously with the Commission's work on the draft articles on State responsibility for internationally wrongful acts.

41. **Mr. Muchemi** (Kenya) said that his delegation supported the recommendation that the General Assembly should draw up a convention on the basis of the draft articles on diplomatic protection. The adoption of such an instrument would codify customary practices, promote legal clarity on the applicable rules and promote the progressive development of international law on the subject. The General Assembly should therefore remain seized of the matter in order to sustain the necessary momentum towards the conclusion of a convention.

42. **Mr. Böhlke** (Brazil) said that the draft articles on diplomatic protection reflected international practice and represented another step in the codification of customary international law. The draft articles strengthened protection for refugees and stateless persons, but some aspects still remain to be addressed. For example, the distinction between diplomatic protection and consular assistance should be clarified. In addition, although draft article 7 marked positive progress in clarifying the issue of multiple nationality, more specific criteria for the exercise of diplomatic protection by more than one State might be needed. The concept of predominant nationality should also be more clearly defined and its relationship to the concept of effective nationality should be better explained. His delegation also had concerns about draft article 19, on recommended practice. Provided that its various concerns were addressed, Brazil agreed with the recommendation by the International Law Commission that a convention should be drawn up on the basis of the draft articles and was of the opinion that doing so would be a valuable exercise in addressing existing gaps in international law and would promote its updating.

43. **Ms. Telalian** (Greece) said that Greece had always supported codification of the rules on diplomatic protection and reiterated her delegation's gratitude to the International Law Commission for its excellent work on the draft articles. The views expressed and the comments made by States thereon related more to issues of formulation and litigation than to codification. Greece had raised some concerns regarding three key issues: nationality of claims, exhaustion of local remedies and diplomatic protection of a ship's crew by the flag State. However, those concerns did not raise any major objections of principle, nor did they in any way entail any general reservation regarding the draft articles. On the contrary, Greece believed that the rules on diplomatic protection were ripe for inclusion in the body of international law.

44. A convention incorporating the draft articles on diplomatic protection, together with a legally binding text based on the draft articles on State responsibility for internationally wrongful acts, would provide the clarity, the precision and the binding nature necessary for uniform application and interpretation of the draft articles at the international level. Greece was not in agreement with the view that the draft articles should take the form of an annex to a General Assembly resolution, as that would leave too much leeway for

State practice to deviate from the articles, thereby indirectly introducing uncertainty in the content thereof. Her delegation believed that the best way for the draft articles to acquire treaty status would be to convene an international diplomatic conference under the auspices of the United Nations.

45. **Mr. Kuzmin** (Russian Federation) said that the draft articles on diplomatic protection presented by the International Law Commission successfully combined codification with progressive development and therefore provided a satisfactory answer to a whole series of issues. The draft articles on diplomatic protection were of significance in their own right and their fate should not be linked with that of the draft articles on the responsibility of States for internationally wrongful acts.

46. He commended the manner in which the definition and scope of diplomatic protection had been formulated in draft article 1. The reference to the fact that diplomatic protection consisted of the invocation by a State of international legal responsibility was important, because it formed the logical basis for the proposed solutions regarding the nationality of the claim and the exhaustion of local remedies.

47. The Commission had been right to explain the difference between diplomatic protection and consular assistance in the commentaries (A/61/10) rather than the draft articles themselves. The Commission had also adopted the correct approach when it had laid down the principle of the continuous nationality of a natural person or corporation between the date of the injury and the date of the official presentation of the claim (draft articles 5 and 10). Those time limits were of significance for determining the receivability of claims submitted within the context of the exercise of diplomatic protection, insofar as they guaranteed that diplomatic protection would not be exercised in cases where persons had acquired the citizenship or nationality of the respondent State after presentation of the claim to the latter.

48. Draft article 9 was judiciously worded; the fact that a State had to meet certain "cumulative criteria" in order to qualify as the State of nationality of a corporation would make it possible to avoid situations in which several States could assert that they were entitled to exercise diplomatic protection in respect of the same corporation.

49. Nevertheless, his Government had doubts about the formulation of some provisions of the draft articles, such as draft article 15, paragraph (a), concerning exceptions to the local remedies rule. Although it recognized that the drafting of that provision had been improved, it was still sceptical about what it regarded as the lowering of the threshold for the application of the rule.

50. The phrasing of draft article 11, paragraph (a), concerning the protection of shareholders was questionable and could give rise to abuse. Draft article 13 on the diplomatic protection of legal persons other than corporations was likewise a source of concern. It would be better to abstain from their inclusion within the scope of the draft articles, because current international practice did not reveal the existence of any customary rules in that sphere and progressive development in that connection would be premature.

51. Although, like the product of any compromise, the draft articles might have shortcomings from the viewpoint of some countries, they were balanced and suitable for adoption as a convention.

52. **Mr. Wickremasinghe** (United Kingdom) said that it was evident from the commentaries to the draft articles that diplomatic protection was a long-established area of international law and that there was a large body of State practice on much of the subject matter covered by the draft articles. The topic had remained largely uncodified, however.

53. The United Kingdom had noted the recommendation of the International Law Commission that Governments should move towards the adoption of a convention based on the draft articles, but it would prefer, for various reasons, that Member States pause for a period of reflection before making any decision about the negotiation of such a convention. The draft articles were still relatively new, and Governments had not had sufficient time to undertake the necessary extensive study and consultation on the text and commentaries. Further, there were important elements of the draft articles that constituted proposals for the development of new law, and while the United Kingdom might be willing to accept some of those proposals, it was not so comfortable with others. In particular, his Government had concerns about draft article 19, entitled "Recommended practice", the inclusion of which risked undermining well-established rules of customary international law. For those reasons,

the United Kingdom considered that Governments needed further time to become familiar with the draft articles before deciding on any future action.

54. In addition, as had been pointed out by the Special Rapporteur on diplomatic protection, the fate of the draft articles was closely bound up with that of the draft articles on State responsibility. The United Kingdom therefore believed that until a decision was made about drafting a convention on State responsibility, a decision to draw up a convention on diplomatic protection would be premature. Moreover, the relative novelty of the draft articles on diplomatic protection meant that they had not been put to the test of actual application, and postponing a decision would permit them to be consolidated and refined through their application in State practice and by international courts and tribunals.

55. **Ms. Chadha** (India) recalled that India had already expressed its views on the substantive aspects of the draft articles in earlier discussions and, like other delegations, had some concerns about draft articles 8 and 19. However, her delegation believed that several of the draft articles constituted codification of customary international law and that their adoption in a convention on diplomatic protection would provide legal certainty. Accordingly, India supported the recommendation of the International Law Commission to draft a convention.

56. **Mr. Hamaneh** (Islamic Republic of Iran) said that, while recognizing the merits of the draft articles, his delegation did not for the time being consider it advisable to use them as a basis for the elaboration of a convention, particularly since they contained many elements that constituted a progressive development of international law and were therefore a source of divergent opinions among States. Moreover, the relationship between the topic of diplomatic protection and that of State responsibility should be duly taken into account in any decision as to the final form of the draft articles and diplomatic protection, since there was no agreement on the adoption of a convention on the responsibility of States for internationally wrongful acts.

57. His delegation agreed with the content of draft article 2, which clearly reflected customary international law and international jurisprudence: it was a discretionary right of States to decide whether or not to exercise diplomatic protection. States also had the right, as stated in the commentary to draft article 4, to determine who their nationals were. Draft article 5, paragraph 2, which allowed for the possibility of such protection being exercised by a State in respect of a person who was a national at the date of the official presentation of the claim but not at the time of injury, did not properly address the concern raised about "nationality shopping". Determination of predominant nationality was subjective; draft article 7 was not based on customary international law, which recognized the role of the non-opposability of diplomatic protection against a State in respect of its own nationals. That draft article therefore represented a premature step in the progressive development of international law.

58. The opinion expressed by the International Law Commission that the awards of the Iran-United States Claims Tribunal demonstrated an evolution in international law regarding diplomatic protection was not shared by his delegation. Most of its awards on the question of dual nationality concerned the law of treaties and interpretation of the Algerian Declaration signed by the Governments in 1981 rather than diplomatic protection; most of the disputes brought before it involved a private party on one side and a Government or Government-controlled entity on the other and concerned primarily issues of municipal law and general principles of law.

59. As for extending diplomatic protection to corporations, covered in chapter III of the draft articles, that was unnecessary as their activities and disputes were largely regulated by bilateral and multilateral treaties between States. Lastly, there was a risk that the local remedies rule would be jeopardized by the formulation of exceptions in draft article 15, particularly its subparagraph (b): slow-moving proceedings were not ipso facto a ground for exception to that rule.

60. **Ms. Gómez** (Ecuador) said that her Government supported the Commission's recommendation that a convention should be drafted on the basis of the draft articles on diplomatic protection. Diplomatic protection was a valuable means of promoting respect for the rights of individuals and entities from other States. Moreover, it was important to be able to apply the diplomatic protection regime to refugees and stateless persons. A convention based on the draft articles would contribute to the codification of international law in that area.

### Agenda item 158: Observer status for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa in the General Assembly (A/62/141 and A/C.6/62/L.2)

61. **Mr. Muchemi** (Kenya), introducing draft resolution A/C.6/62/L.2 concerning observer status for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa in the General Assembly, said that, in addition to the sponsors listed in the draft resolution, Costa Rica, Mali, Namibia and Nigeria had also become sponsors. He drew attention to the information contained in the explanatory memorandum in annex I to document A/62/141. In addition to the member States of the Centre listed in that document, Somalia was now also a member.

62. **Mr. Kanu** (Sierra Leone) said that his delegation also wished to become a sponsor of the draft resolution. His country had experienced the devastating effects of small arms and light weapons during almost 11 years of civil war. The draft resolution was significant not only for the Great Lakes Region but for the whole of Africa. He therefore urged delegations to support it.

63. **Mr. Muhumuza** (Uganda) said that the availability of small arms and light weapons had a serious impact on the economic and social situation of the population in affected countries. The title of the draft resolution should read "Observer status for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region, the Horn of Africa and Bordering States in the General Assembly".

64. **Mr. Moeletsi** (Lesotho) said that his delegation also wished to become a sponsor of the draft resolution.

65. **Ms. Nworgu** (Nigeria) said that West African countries, too, had been grappling with the problem of small arms and light weapons for some time; indeed, the problem affected not just Africa but most parts of the world. Her delegation therefore supported the draft resolution and called on others to do so.

### Agenda item 159: Observer status for the Italian-Latin American Institute in the General Assembly (A/62/143 and A/C.6/62/L.5)

66. **Mr. Spatafora** (Italy) introduced draft resolution A/C.6/62/L.5 concerning observer status for the Italian-Latin American Institute in the General Assembly and drew attention to the information contained in the explanatory memorandum in annex I to document A/62/143. Ministers and Government officials from the member States of the Institute had paid tribute to its work at the third National Conference on Italy-Latin America and the Caribbean, held recently in Rome.

### Agenda item 160: Observer status for the Energy Charter Conference in the General Assembly (A/62/191; A/C.6/62/L.3 and Corr.1)

67. **Mr. Miyajima** (Japan), introducing draft resolution A/C.6/62/L.3 and Corr.1 concerning observer status for the Energy Charter Conference in the General Assembly, said that, in addition to the sponsors listed in the draft resolution, Albania, Austria, Bulgaria, the Czech Republic, Ireland, Kyrgyzstan, Latvia, the Netherlands, Portugal, the Russian Federation and Sweden had also become sponsors. He drew attention to the information contained in the explanatory memorandum in annex I to document A/62/191.

### Agenda item 162: Observer status for the Eurasian Development Bank in the General Assembly (A/62/194 and A/C.6/62/L.4)

68. **Mr. Sadykov** (Kazakhstan) introduced draft resolution A/C.6/62/L.4 concerning observer status for the Eurasian Development Bank in the General Assembly and drew attention to the information contained in the explanatory memorandum in annex I to document A/62/194. It was expected that, by the end of 2010, the value of the Bank's investment portfolio would exceed $4.5 billion and that the value of its assets would reach $5.5 billion.

*The meeting rose at 12.05 p.m.*

United Nations

A/C.6/62/SR.11

# General Assembly

Sixty-second session

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## Sixth Committee

**Summary record of the 11th meeting**
**Held at Headquarters, New York, on Monday, 22 October 2007, at 10 a.m.**

*Chairman*: Mr. Tulbure .......................................................... (Moldova)
*later*: Ms. Orina (Vice-Chairman)........................................... (Kenya)

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Agenda item 81: Report of the United Nations Commission on International Trade Law on the work of its fortieth session

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*The meeting was called to order at 10.05 a.m.*

## Agenda item 81: Report of the United Nations Commission on International Trade Law on the work of its fortieth session (A/61/17, Part I)

1. **Ms. Sabo** (Vice-Chairperson of the United Nations Commission on International Trade Law (UNCITRAL)), introducing the Commission's report on the work of its fortieth session (A/62/17, Part I), said that the Commission had approved part of the draft UNCITRAL Legislative Guide on Secured Transactions. That had been made possible by its substantive work in the area of receivables financing, which had been concluded with the adoption in 2002 of the United Nations Convention on the Assignment of Receivables in International Trade. In order to complete its adoption of the Legislative Guide, the Commission had decided to hold its fortieth session in two parts; it would resume that session in December 2007.

2. The Commission had considered that future work in the field of secured transactions law should be undertaken with a view to preparing an annex to the draft Guide, dealing specifically with security rights in intellectual property. It would take into account the fact that in many countries secured transactions law and intellectual property law were not yet sufficiently developed to accommodate financing practices under which intellectual property rights were used as security.

3. Working Group I (Procurement) had continued to discuss proposals for the revision of the 1994 UNCITRAL Model Law on Procurement of Goods, Construction and Services to reflect new practices, in particular those resulting from the use of electronic communications and e-commerce practices in procurement, and had decided to add the issue of conflicts of interest to the list of topics to be considered. Another increasingly used procurement technique to which it would soon be giving attention was the framework agreement or indefinite-delivery-indefinite-quantity contract. The Working Group would seek to distil the best practice from the many varieties of that technique in use, and make proposals to reflect it in the text of the Model Law. The Commission had reaffirmed its support for the work of the Working Group and recommended that it agree on a concrete agenda for its forthcoming sessions.

4. Working Group II (Arbitration and Conciliation) had nearly completed its first reading of the revised UNCITRAL Arbitration Rules. In view of the success of those Rules, the Commission had felt that revision should not alter the structure, spirit or style of the text, whose flexibility should be maintained. Broad support had been expressed in the Working Group for a generic approach applicable to all types of arbitration irrespective of the subject matter of the dispute. However, the focus of the revision would be on mainstream commercial disputes. Future work in the field of settlement of commercial disputes should include the issue of arbitrability. Online dispute resolution and the implications of electronic communications should be considered, at least initially, in the context of the revision of the UNCITRAL Arbitration Rules.

5. She drew attention to the fiftieth anniversary, in 2008, of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), which would provide a good opportunity for the UNCITRAL secretariat to promote the Convention, in particular through a conference to be held in cooperation with the United Nations in New York, on 1 February 2008. It was an ongoing concern of the Commission to monitor the legislative implementation of that Convention, to which end it had undertaken jointly with the International Bar Association a project geared to the development of a legislative guide to promote uniform interpretation of that instrument. The secretariat would be presenting a written report on the subject at the Commission's forty-first session, in 2008; to that end, as well as to guard against duplication of effort, it had been encouraged to cooperate with the International Chamber of Commerce, which had set up a task force to examine national procedures in regard to foreign arbitral awards.

6. Working Group III (Transport Law) had completed its second reading of the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea] and had commenced its third reading. It hoped to complete its final reading and to circulate it to Governments for comments prior to the forty-first session of the Commission, in 2008. While good progress had been made, there remained serious concerns regarding the treatment of certain substantive issues in the draft Convention, such as freedom of

contract in volume contracts, which were expected to be solved before finalization of the draft instrument.

7. Working Group V (Insolvency Law) had agreed that the UNCITRAL Legislative Guide on Insolvency Law and the UNCITRAL Model Law on Cross-Border Insolvency provided a sound basis for the modernization of insolvency law. Its current work on corporate groups was intended to complement those texts, not to replace them. Concerns had been expressed regarding some aspects of that work, especially substantive consolidation of assets or liabilities of different entities, its effect on the separate identity of individual members of a corporate group and the possibility of submitting a solvent member of a corporate group to collective insolvency procedures. The Working Group would bear those concerns in mind in its deliberations. On the subject of facilitation of cooperation, including direct communication and coordination in cross-border insolvency proceedings, the Working Group would continue to compile practical experience in the negotiation and use of cross-border protocols.

8. In the area of electronic commerce, the secretariat had identified a number of topics for inclusion in a comprehensive reference document that would enable developing country legislators and policy makers, in particular, to establish a favourable legal framework. The secretariat had prepared a useful sample portion of the comprehensive document dealing specifically with issues related to authentication and cross-border recognition of electronic signatures, whose publication on a stand-alone basis had been requested by the Commission. With regard to commercial fraud, which was a growing obstacle to the growth of international trade, the Commission had been requested to use its unique ability to marshal the necessary public and private interests in order to further efforts to combat it effectively. The Commission had therefore called on the secretariat to identify and to prepare lists of common features present in typical fraudulent schemes, with a view to using such materials in a very broad sense for education, training and prevention. The secretariat had completed that task and had prepared a note on indicators of commercial fraud, which would be circulated to Governments for comment prior to the Commission's next session. The Commission had also requested the secretariat to assist the United Nations Office on Drugs and Crime (UNODC) in its work on fraud, the criminal misuse and falsification of identity and related crimes.

9. Technical assistance activities continued to form an indispensable element of the work undertaken by the Commission. It was therefore deeply troubling to learn that, beyond 2007, requests for technical cooperation and assistance would have to be declined unless new donations were received or other alternative sources of funds could be found. She urged all Member States to ensure the maintenance of the Commission's technical assistance for law reform, if possible through multi-year contributions, or as specific-purpose contributions, so as to facilitate planning and enable the secretariat to meet the increasing requests from developing countries and countries in transition.

10. The overall technical assistance activities undertaken by the Commission continued to include case law on UNCITRAL texts (CLOUT). As at 18 April 2007, 63 issues of CLOUT had been prepared for publication, dealing with 686 cases, relating mainly to the United Nations Sales Convention and the Model Law on International Commercial Arbitration. The digest of case law on the United Nations Sales Convention, published in December 2004, had been reviewed and edited and presented to the CLOUT National Correspondents meeting on 5 July 2007. The digest of case law on the UNCITRAL Model Law on International Commercial Arbitration was being further updated and would be published once finalized. Moreover, the UNCITRAL website, one of the few United Nations websites to be maintained in the six official languages, constituted, along with the UNCITRAL law library and UNCITRAL publications, an important information source and tool for technical assistance activities.

11. The harmonization and unification of international trade law required active cooperation and coordination amongst rule-formulating organizations. The General Assembly had accordingly endorsed the Commission's view that the secretariat should adopt a more proactive approach to the coordination role to be performed by the Commission, in its capacity as the core legal body in the United Nations system in the field of international trade law. In that spirit, the secretariat had taken steps to engage in a dialogue on both legislative and technical assistance activities with a number of interested organizations.

12. Another issue considered at the session in 2007 concerned the Commission's methods of work. It had been widely felt that, while the current working methods had demonstrated their effectiveness and led to satisfactory results, a review might be timely, particularly in view of the increase in the number of States members of the Commission. The secretariat had accordingly been asked to prepare a compilation of procedural rules and practices established by UNCITRAL itself or by the General Assembly, and the issue had been included as a specific item in the agenda of the Commission at the second part of its fortieth session.

13. She recalled that the UNCITRAL Congress on the theme "Modern Law for Global Commerce" had been held in Vienna in July 2007 and had provided an opportunity for an informal exchange of views among trade law experts from ministries, professional associations and academics on current issues in international commercial law as well as providing inspiration for future work of the Commission and other rule-formulating agencies within and outside the United Nations. Most of the speeches made at the Congress were already available online.

14. The Commission welcomed the Sixth Committee's continued consideration of the rule of law at the national and international levels and hoped that it would lead to comprehensive and coherent approaches within the United Nations system to building and promoting the rule of law. The current sporadic and fragmented approaches did not achieve sustained results. With their primary focus on criminal and transitional justice, and judicial and police reforms, they overlooked long-term measures and the economic dimension. To build a culture based on the rule of law, it was essential to lay down the foundations for long-term stability, development, empowerment and good governance. For that reason, commercial law reforms and UNCITRAL activities and resources were relevant.

15. The information about UNCITRAL rule of law activities submitted for inclusion in the inventory referred to in paragraph 2 of General Assembly resolution 61/39 on the rule of law at the national and international levels identified problems encountered by the Commission in the implementation of its rule of law activities and actions and resources needed to overcome those problems. That information would be reflected in a report to be submitted to the General Assembly at its next session, pursuant to paragraph 3 of that resolution.

16. **Ms. Holten** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that it was clear from the report of UNCITRAL on the work of its fortieth session that extensive cooperation in the field of international trade law was crucial to the success of global trade and economic development. She commended the Commission's achievement in adopting a major part of the draft UNCITRAL Legislative Guide on Secured Transactions, which would have significant economic benefits for States. The Nordic countries anxiously awaited the adoption of the rest of the draft Legislative Guide.

17. The Nordic countries fully supported the modernization of the UNCITRAL Arbitration Rules, which had not been amended since their adoption in 1976. Important work had also been done on the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services and its Guide to Enactment. It was essential that the Model Law should reflect new procurement practices and techniques, especially those resulting from the use of electronic communications in public procurement. Working Group III (Transport Law) had also made good progress on the development of a new international transport convention with multi-modal application.

18. The Nordic countries noted with appreciation the progress made with regard to consideration of the treatment of corporate groups in insolvency. Since the Insolvency Guide and the UNCITRAL Model Law on Cross-Border Insolvency worked well, however, it would be wise to focus on supplementing rather than replacing the two texts. Lastly, the Congress on the theme "Modern Law for Global Commerce", held in celebration of the Commission's fortieth anniversary, had shown a modern and innovative approach to international law-making. The discussion on general topics such as international rule-making or more specific topics such as secured transactions, corporate governance, insolvency, the future of contract law harmonization, electronic commerce, procurement techniques and commercial dispute settlements would undoubtedly prove useful for the Commission's future work.

19. **Mr. Maharia** (India) said that his delegation welcomed the Commission's efforts to promote the application of modern private law standards to international trade and the completion of its work on the draft Legislative Guide on Secured Transactions. He likewise supported the efforts to harmonize the UNCITRAL and UNIDROIT model laws and the preparation of an annex in that regard on the subject. A second annex to the draft Guide, dealing with security rights in intellectual property, would be useful, and he hoped that competent international organizations would be involved in its preparation.

20. He agreed that Working Group II (Arbitration and Conciliation) should take care not to alter the structure of the UNCITRAL Arbitration Rules and should adopt a generic approach in that area. He welcomed the comprehensive review being undertaken of the Commission's working methods and emphasized the importance of inclusiveness and transparency. Lastly, he noted that CLOUT remained one of the Commission's most important technical assistance activities.

21. **Mr. Song** (Singapore) said that his delegation strongly supported the work done by UNCITRAL to facilitate international trade. Its fortieth session had clearly been busy and fruitful, with work proceeding apace on instruments that would make a welcome contribution, notably the draft UNCITRAL Legislative Guide on Secured Transactions and the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea]. Other topics of great interest at the session were the Commission's review of its working methods and its coordination with other international organizations.

22. His delegation wished to reiterate its view that the important work being done by the UNCITRAL secretariat through its technical assistance programmes deserved more help and support. As the Commission's report indicated (A/62/17, para. 216), Singapore and Mexico were the only countries that had contributed to the UNCITRAL Trust Fund for Symposia since the Commission's thirty-ninth session.

23. His delegation also wished to express its appreciation for the key role played by the UNCITRAL secretariat in providing legal research services to the Commission and assisting other United Nations organs, bodies and conferences in matters relating to international trade law. Thanks in part to the able direction of the current Director of the UNCITRAL secretariat, the Commission had many achievements to its credit in recent years, notably the successful completion of the United Nations Convention on the Use of Electronic Communications in International Contracts, which was attracting an increasing number of signatories.

24. **Mr. Bühler** (Austria) said that, although his delegation actively supported the laudable emphasis in recent years on the rule of law as part of the United Nations agenda, the contribution of UNCITRAL to strengthening the rule of law in the field of international trade law was of long standing. For more than 40 years UNCITRAL had furthered the harmonization of international trade law in coordination with other international organizations by preparing new instruments, promoting wider acceptance of existing instruments, ensuring uniform interpretation of international conventions and uniform laws, disseminating information on national legislation and providing technical assistance.

25. His delegation commended the Commission on the progress made towards the adoption of the draft UNCITRAL Legislative Guide on Secured Transactions and looked forward to its finalization during the resumed fortieth session of the Commission in December 2007. The Guide would provide a legal framework that facilitated secured financing and would thus promote access to low-cost credit and enhance national and international trade.

26. Although his delegation supported a review of the working methods of the Commission and its working groups in view of the recent increases in membership and in the number of topics being dealt with, it would caution the Commission not to compromise its traditional principles of efficiency, flexibility and equality, including the principle of consensus. Moreover, the review of working methods should not interfere with a focus on the draft Legislative Guide during the resumed session.

27. The highly successful Congress on the theme "Modern Law for Global Commerce" held in Vienna in July 2007 had reviewed the past work of UNCITRAL and other organizations active in the field of international trade law, assessed current work programmes and considered topics and areas for future work. To make the results of the Congress broadly available, his delegation supported the Commission's

request to have the proceedings published in the official languages of the United Nations to the extent permitted by available resources.

28. Lastly, in view of the upcoming fiftieth anniversary of the adoption of the New York Convention, his delegation called upon all States not yet parties to the Convention to consider acceding to it. The Convention, to which 142 States, including all the major trading nations, were currently parties, was one of the most successful treaties in the area of commercial law.

29. **Mr. Medrek** (Morocco) said that his country, as a member of UNCITRAL, had a particular interest in the Commission's efforts to develop equitable rules and practices for international trade. His delegation welcomed the adoption of a portion of the draft Legislative Guide on Secured Transactions at the Commission's fortieth session. Considerable progress had been made on the question of the scope of the draft Legislative Guide as to intellectual property, securities and financial contracts. His delegation was generally satisfied with the terminology of the draft Guide and hoped that the outstanding issues could be dealt with and the Guide finalized at the resumed fortieth session in December 2007. The usefulness of the Guide would depend on its being sufficiently flexible to take into account legal regimes and practices that were already well established.

30. Although the UNCITRAL Model Law on the Procurement of Goods, Construction and Services had been a milestone in the development of procurement law, it could benefit from revision to reflect new practices, in particular those resulting from the use of electronic communications and the experience gained by applying national legislation modelled on it. His delegation would encourage Working Group I to adopt a concrete agenda for its forthcoming sessions.

31. Similarly, the UNCITRAL Arbitration Rules, adopted by so many arbitration centres, could benefit from modernization to promote greater efficiency, provided that any revision did not alter the structure or the spirit of the text. His delegation noted with satisfaction that Working Group II had opted for a generic approach that sought to identify common denominators that applied to all types of arbitration, regardless of the subject matter, in preference to dealing with specific situations. His delegation hoped that a revised version of the Arbitration Rules could be adopted by the Commission no later than 2009.

32. His Government was organizing a series of seminars and meetings in Morocco to celebrate the fiftieth anniversary of the New York Convention. His delegation looked forward to the conference organized jointly by the United Nations and the International Bar Association to be held in New York in February 2008 to commemorate the anniversary.

33. With regard to the elaboration of a legislative instrument on issues relating to the international carriage of goods by sea, his delegation welcomed the progress made on third reading of the draft convention with respect, among other things, to the scope of application, electronic transport records, the period of responsibility of the carrier and the relationship of the draft Convention to other conventions. It was to be hoped that Working Group III could address the concerns expressed by some delegations in order to be able to present a text to the Commission in 2008.

34. On the topic of commercial fraud, his delegation welcomed the work done in collaboration with other interested organizations, in particular the United Nations Office on Drugs and Crime (UNODC), to develop indicators of commercial fraud and present them in a document that could be of educational and preventive value. Since commercial fraud was primarily a matter of criminal law, cooperation between UNCITRAL and UNODC was to be encouraged.

35. To preserve the role of UNCITRAL as an effective rule-making body and one of the great successes of the United Nations system, serious consideration should be given to all the proposals for improving its working methods, particularly in view of the recent increase in its membership and in the number of topics addressed. His delegation believed that decision-making by consensus remained the most appropriate procedure for the Commission, but minority views must also be taken into account and reflected in order to ensure universal acceptance of the instruments adopted. In addition, greater use of all the official languages of the United Nations, particularly in documents circulated informally, would lead to better reflection of the diversity of legal systems. His delegation commended the UNCITRAL secretariat on the excellence of its improved website, which was regularly updated and provided speedy access to the

Commission's working documents in all the official languages.

36. Technical assistance in drafting legislation was of great importance. His delegation reiterated its appeal to all States, international organizations and other interested entities to make an extra effort to enable the UNCITRAL secretariat to meet the increasing requests from developing countries and countries with economies in transition for training and technical assistance.

37. **Ms. Bolaños-Pérez** (Guatemala) said that her country was a member of the Commission and considered its work to be of great importance for economic development. Her delegation welcomed the adoption of portions of the draft UNCITRAL Legislative Guide on Secured Transactions. The draft was timely and relevant to Guatemala, which was in the process of making major changes in its legislation, along the lines developed by UNCITRAL. With regard to security rights in intellectual property, more information was needed, and her delegation looked forward to the annex to be prepared on the subject. In many countries coordination between secured transaction law and intellectual property law was not sufficiently developed to allow for financing secured by intellectual property rights.

38. Guatemala was one of the countries that had put into effect the UNCITRAL Model Law on International Commercial Arbitration. Her delegation therefore felt strongly that any revision of the UNCITRAL Arbitration Rules, which were used by Guatemalan arbitration centres, should be approached with caution in order to preserve the structure and flexibility of the text.

39. The Working Group III (Transport Law) had made significant progress on a number of difficult issues. However, her delegation had concerns about the treatment of the shipper's liability for delay, limitation of the carrier's liability and freedom of contract in volume contracts. It regretted that the Working Group's twenty-first session would not be held in New York.

40. In view of the need for better coordination and consistency between the Commission and other bodies on issues that overlapped mandates, the Commission was to be commended for its efforts to maintain a constructive dialogue and exchange information with UNODC on the topic of commercial fraud.

41. Her delegation was concerned that the existing trust funds lacked resources to meet the requests of developing countries for cooperation and opportunities to participate in UNCITRAL activities and appealed to all Member States to contribute. Since the Commission was the core legal body in the United Nations system in the field of international trade law, broader participation, particularly by developing countries, was essential in order to accomplish the difficult task of harmonizing diverse legal traditions. Her delegation therefore also supported the proposals presented by France (A/CN.9/635) on the working methods of the Commission.

42. **Mr. Wang** Chen (China) said that his delegation was satisfied with the progress achieved by UNCITRAL at its fortieth session. The major tasks facing the Commission were to complete work on the Legislative Guide on Security Transactions by the end of 2007 and to finish the third reading of the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea] with a view to its adoption in 2008. His delegation was in favour of the early adoption of those two instruments.

43. His delegation also commended UNCITRAL for holding the Congress on the theme "Modern Law for Global Commerce" following its fortieth session. Convening such meetings on a regular basis would facilitate the exchange of views and enhance the implementation of legal instruments on international commerce.

44. UNCITRAL played an increasingly important role in the formulation of legal rules on international trade, ably supported by its secretariat, which devoted itself to studying the latest developments in international trade and formulating generally applicable rules. His delegation attached great importance to the work of UNCITRAL and participated fully in the work of drafting conventions, model laws and legislative guides. China was a party to the relevant conventions and benefited from the UNCITRAL model laws and legislative guides in its domestic legislation. It also made efforts to raise awareness at home of the achievements of UNCITRAL. The fiftieth anniversary of the adoption of the New York Convention would highlight the indispensable role that UNCITRAL had played in unifying legal rules on international trade and its impact around the globe. China intended to take part in

the international commemoration and to organize commemorative events at home.

45. **Mr. Mongkolnavin** (Thailand) said that, as an active member of UNCITRAL for many years, his delegation pledged its continued support and cooperation. Trade was fundamental to economic prosperity and sustainable peace and development. In recent decades globalization had brought about an unprecedented increase in international trade and commerce, free movement of persons and commodities and a proliferation of borderless commercial transactions, necessitating not only bilateral and multilateral agreements but also the harmonization of national laws. Thailand was therefore committed to supporting the endeavour by UNCITRAL and other organizations such as the Hague Conference on Private International Law and the International Institute for the Unification of Private Law (UNIDROIT) to develop, codify and modernize international law. Over the years Thailand had benefited from the work of UNCITRAL, especially the model laws, in drafting its domestic legislation in such areas as electronic commerce and arbitration, and the compilations of case law on UNCITRAL texts (CLOUT) had proved to be useful tools.

46. At its fortieth session the Commission had once again made great strides, especially in its progress towards the adoption of the draft UNCITRAL Legislative Guide on Secured Transactions, an innovative and useful development that would enhance access to affordable credit by building confidence on the part of financial institutions through systematic registration of rights and effective enforcement of financial claims. Affordable credit would allow enterprises to expand and realize their full potential, and that in turn would lead to economic growth, increased competitiveness and international trade. The Legislative Guide would be very useful in the drafting of the Thai business securities bill. His delegation looked forward with confidence to the results of Working Group VI's efforts to prepare an annex to the Guide specific to security rights in intellectual property. Thailand was also closely following the work of UNIDROIT on its draft Convention on Substantive Rules regarding Intermediated Securities.

47. On the issue of procurement, his delegation welcomed the progress made on the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services to encompass the use of electronic communications and new practices such as electronic reverse auctions. In Thailand electronic media were widely used for the publication of procurement-related information; regulations required all information related to procurement to be kept for 10 years.

48. As the fiftieth anniversary of the New York Convention approached, his delegation commended the efforts to prepare the revised UNCITRAL Arbitration Rules in time for the celebration of that landmark convention. The revision was timely for Thailand, which was currently modernizing its arbitration legislation. However, the revised Rules should not be formulated in such a way that the universal appeal of the Arbitration Rules was affected.

49. In the area of transport law, Working Group III's commencement of the third reading of the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea] was a significant step forward, one that should make it possible to complete the draft Convention in 2008. His delegation was also encouraged to see good progress being made with regard to insolvency law, since Thailand was currently developing a comprehensive new insolvency law regime and had set up a committee to bring its legislation into line with the UNCITRAL Legislative Guide on Insolvency Law and the UNCITRAL Model Law on Cross-Border Insolvency and a subcommittee to study post-commencement finance.

50. **Mr. Tugio** (Indonesia) said that his delegation was pleased to note the substantial progress made by the Commission at its latest session and in particular its timely focus and excellent work on the increasing use of the Internet in international trade transactions, a subject of particular relevance for developing countries. It was evident that e-commerce had quickly become a necessity for increasing the scale and efficiency of commercial translations and had the potential to radically alter economic activities and the social environment, but it was regrettable that the global digital divide continued to thwart equitable development. Alongside the many beneficial aspects of e-commerce there were some negatives, such as cyberfraud, unsolicited electronic communications (spam) and cybercrime. It was therefore important that the study on the indicators of commercial fraud should include the element of electronic business transactions and that the Commission should strengthen its cooperation with UNODC on that subject.

51. Many conventions emanating from the work of the Commission had gained broad recognition in the international community, notably the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the United Nations Convention on Contracts for the International Sale of Goods. It was important that any revision of the UNCITRAL Arbitration Rules should be consistent with the New York Convention. The Commission's model laws were also used as legal references in many countries; to promote uniform interpretation, his delegation hoped that the Commission would be able to increase its technical assistance to developing countries, in addition to its dissemination of case law on UNCITRAL instruments.

52. His delegation supported the effort to review the Commission's working methods to increase its efficiency, as robust and flexible methods of work would enhance the contribution the Commission could make to international trade law. However, caution should be exercised when reviewing the practice of decision-making by consensus. Some of the factors to be considered were the slow process of ratification by Member States of the hard law emanating from the work of UNCITRAL; the need for expert input from professional associations and the private sector; and the challenges developing countries faced in participating in the Commission's work due to their lack of resources. Some of those factors were interrelated: lack of resources, capacity constraints and restricted transfer of knowledge from developed countries were the main reasons why developing countries were slow to ratify UNCITRAL instruments and harmonize their national laws with UNCITRAL model laws. It was crucial for developing countries to be helped to participate on an equal footing in the Commission's work. In sum, inclusiveness and transparency in the Commission's deliberation process needed to be strengthened.

53. **Ms. Mohd-Nurdin** (Malaysia) said that Malaysia currently traded with 234 economies, compared to fewer than 100 two decades earlier. Countries such as hers, which relied substantially on external trade for their future growth and progress, attached great importance to processes that would enable the multilateral trading system to function with minimum impediments, so that all countries, whether developed or developing, would be able to benefit from international trade. Her delegation therefore fully supported the efforts of UNCITRAL to further the harmonization and unification of international trade law. As a new member of the Commission, Malaysia looked forward to contributing actively to those efforts.

54. Malaysia had been following the activities of Working Group II (Arbitration and Conciliation) closely, in particular with respect to the incorporation of the legislative provisions on interim measures of protection into the UNCITRAL Model Law on International Commercial Arbitration. Malaysia had recently revised its arbitration law to make it more consistent with the UNCITRAL Model Law and, as part of that exercise, was considering incorporating the model legislative provisions on interim measures of protection adopted by the Commission in 2006. In the area of electronic commerce, certain principles of Malaysia's Electronic Commerce Act 2006, such as the concepts of "writing" and "original", followed the "functional equivalent approach" of the UNCITRAL Model Law on Electronic Commerce.

55. Her delegation reiterated its commitment to UNCITRAL as the core legal body of the United Nations system in the field of international trade law and looked forward to working closely with other members to fulfil the Commission's mandate.

56. **Mr. Shautsou** (Belarus) said that the mechanisms contained in the draft UNCITRAL Legislative Guide on Secured Transactions would enable enterprises from developing countries to gain access to inexpensive credit resources on the same terms as those from developed countries. The adoption of the draft Legislative Guide would also help Belarus to attract external finance, since the interest rates currently offered to Belarusian enterprises by both national and foreign financial institutions considerably exceeded those enjoyed by European enterprises. His Government would use the draft Legislative Suite as a model when amending its national legislation to establish an up-to-date secured-transactions regime.

57. His Government was updating national legislation on procurement transactions. The presidential decree "On State procurement" had been adopted in 2006, based on the UNCITRAL Model Law on Procurement of Goods, Construction and Services with Guide to Enactment and an electronic tender system providing information on all State procurement had been introduced. The work of Working Group I on

updating the Model Law was therefore of considerable practical value to Belarus.

58. Extrajudicial dispute settlement procedures enabled both parties to find an acceptable way of settling disputes while observing confidentiality and timeliness requirements and reducing legal costs. At the same time, they carried certain risks, in that disputes could be considered outside a legal setting, and the use of such procedures in preference to State judicial proceedings or the international arbitration system put small enterprises at a disadvantage vis-à-vis large corporations. The review by Working Group II of the UNCITRAL Arbitration Rules, under which parties made ad hoc arrangements to settle external economic disputes and disputes between investors and States, should not only take into account the progressive advances in information technology over the past few years but should maintain the spirit and high quality of the Rules.

59. His delegation supported the work of Working Group III (Transport Law), which was elaborating new international standards relating to the responsibility of the carrier and the shipper. The issue was of particular importance for Belarus because it was establishing its own merchant fleet and diversifying its exports. There was also a need to ensure the timely delivery of goods on the door-to-door principle, including that to individual wholesale customers.

60. As for Working Group V (Insolvency Law), its discussions would doubtless result in balanced decisions on how best to guarantee the interests of the State, the owners of enterprises and the workforce in the event of insolvency, at the same time providing for an integrated system to meet the needs of creditors and removing obstacles to business activity. Every effort was being made in Belarus to create favourable business conditions, including the elaboration of practical forms of protection for the rights and lawful interests of enterprises and, in particular, the prevention of bankruptcy. On the basis of the experience acquired over the past five years of the workings of the Law on Economic Insolvency and Bankruptcy, it had been decided to amend and supplement the Law with a view to creating a single comprehensive bankruptcy mechanism.

61. Growing competitiveness on the world market meant that there was an urgent need for new methods of selling goods, services and construction. A popular tool for such trade was electronic commerce, which made it possible to make significant cuts in expenditure on premises and salaries and, in some cases, to cut out the middleman. The effective functioning of electronic commerce was, however, impossible without the proper legal basis and infrastructure in respect of banking, insurance and centres for authentication of signatures and operational security. His delegation therefore fully supported the Commission's work on the elimination of legal barriers to effective international trade. Belarus was currently preparing regulations on electronic wholesale commerce, drawing on the United Nations Convention on the Use of Electronic Communications in International Contracts.

62. **Ms. Gunaratne** (Sri Lanka) said that Sri Lanka was privileged to serve as a member of UNCITRAL and would endeavour to pursue the Commission's goals of furthering the harmonization of international trade. Her delegation welcomed the progress made during the fortieth session of UNCITRAL with regard to procurement of goods, construction and services, arbitration, insolvency, electronic commerce, commercial fraud, and technical assistance. It also welcomed the adoption of the part of the draft UNCITRAL Legislative Guide on Secured Transactions.

63. Sri Lanka had ratified the United Nations Convention on the Use of Electronic Communications in International Contracts in 2006 and firmly believed that it enhanced legal certainty and commercial predictability in international contracts transacted through electronic communications. Her country's Electronic Transaction Act of 2006 gave effect to the provisions of the Convention at the national level. That legislation was based on the UNCITRAL Model Law on Electronic Commerce and the Model Law on Electronic Signatures. It facilitated domestic and international e-commerce by eliminating existing barriers and it promoted public confidence in the authenticity, integrity and reliability of electronic transactions. Through the new legislation, Sri Lanka intended to harness the potential of information and communication technology to benefit rural populations. An electronic communications programme currently being implemented by the Information and Communication Technology Agency of Sri Lanka aimed to foster economic growth, alleviate poverty, and promote social integration and peace.

64. Her delegation firmly believed that ensuring the continued ability of the Commission to provide technical cooperation and assistance in response to requests by States was essential in order to attain its harmonization goals and bridge the gaps in technical and legal capabilities between developed and developing nations. Sri Lanka was therefore deeply concerned by the shortage of funding for the UNCITRAL Trust Fund for Symposia and appealed to Member States to take action on that issue with the utmost urgency.

65. Sri Lanka had noted with interest the proposal to revise the UNCITRAL Arbitration Rules, which formed the basis for the Sri Lankan arbitration law. Her delegation recognized that the UNCITRAL Rules had not been modified since their adoption in 1976 and saw the need for modernization, but agreed with the Commission's view that any changes should not alter the structure of the text, its spirit or its drafting style, and should respect its flexibility and simplicity. Sri Lanka particularly looked forward to the Commission's work on the application of arbitration rules to investor-State disputes. Sri Lanka offered investors the choice of either institutional or ad hoc arbitration, with the latter providing recourse to the UNCITRAL Rules.

66. Her delegation welcomed the initiative to monitor the implementation of the New York Convention. Sri Lanka, through its Arbitration Act, had provided for the effective implementation of the Convention's provisions at the domestic level. Her delegation also commended the William C. Vis International Commercial Arbitration Moot Competition and the UNCITRAL internship programme, and supported the Commission's suggestion to establish the financial means to encourage greater participation in the latter by young lawyers from the developing world.

67. Sri Lanka noted with satisfaction that the various UNCITRAL conventions and model laws were being applied in many countries, which was an indication that UNCITRAL was succeeding in harmonizing and unifying international trade law and thereby promoting a conducive environment for international trade. The Commission's fortieth anniversary was a prudent time to re-evaluate its work, and any proposal aimed at furthering the success of the Commission deserved the serious consideration and support of Member States.

68. **Mr. Leghari** (Pakistan) said that Pakistan supported the role of UNCITRAL and recognized it as the core legal body within the United Nations system in the field of international trade law. However, the Commission needed to address the duplication of work in that field through enhanced cooperation, coordination and coherence with other international organizations. Progressive modernization and harmonization of international trade law would contribute significantly to economic cooperation among all States; however, such cooperation must be based on the principles of equality, equity, common interest and respect for the rule of law. It should serve to eliminate discrimination in international trade and remove legal difficulties affecting developing countries. The existing structural imbalances in the international trade regime also needed to be addressed.

69. Pakistan supported the Commission's plans to conduct a comprehensive review of its working methods. His delegation believed that the work of the Commission could be greatly enhanced through participation by observers from relevant intergovernmental and non-governmental organizations. It also supported participation by all Member States in the Commission's sessions, an objective that could not be realized until adequate travel assistance was provided to those in need.

70. UNCITRAL played an important role in capacity-building for developing countries in the field of international trade law reform, but more needed to be done. Member States and non-State actors, including the United Nations Secretariat and international and regional organizations, could help by providing funding in order to enhance the Commission's capacity to provide such assistance.

71. His delegation had carefully studied the recommendations on the UNCITRAL draft Legislative Guide on Secured Transactions and supported the key objectives of the exercise, including the promotion of secured credit. However, Pakistan saw an inherent imbalance between promoting and enforcing creditors' rights and protecting the rights of other parties. His delegation was also evaluating the advisability of requiring a notice in a general security rights registry as a means of enhancing predictability and transparency. He understood that the registry would serve as a source of information and as an efficient point of reference. However, whether or not it would prove a workable method by which an existing or

future security right in a grantor's existing or future assets might be made effective against a third party remained open to scrutiny.

72. The recommendations concerning priority of a security right as against the rights of competing claims would provide a basis for an efficient and predictable regime to determine the priority of security rights and would facilitate transactions involving more than one security right. Pakistan was still evaluating the part of the guidelines which established precedence for security rights created through registration over those created through other means. He believed that contractual obligation should be the basis for creating a security right and that it should take precedence over any other limiting factor. He agreed that in the case of property to which the grantor acquired rights or power to encumber at some point in the future, the security right in that asset was created when the grantor acquired those rights or that power. However, he had questions about the efficacy and authenticity of oral agreements, which might be accompanied by transfer of possession of a movable encumbered asset, but might fall short of a reliable criterion for the creation of security rights if it were not accompanied by written or electronic evidence.

73. Pakistan appreciated the progress made in the area of insolvency law and supported the view that the current work on corporate groups was intended to complement the Insolvency Guide and the UNCITRAL Model Law on Cross-Border Insolvency, not to replace them. It was to be hoped that future work on the topic would provide solutions for the legal problems in international insolvency law.

74. His delegation had taken note of the work done in the fields of procurement, arbitration and conciliation, and transport law and appreciated the Commission's identification of the challenges in the field of electronic commerce and commercial fraud. Pakistan especially commended the work on indicators of commercial fraud, which would be of immense educational and preventive value.

75. *Ms. Orina (Kenya) (Vice-Chairman) took the chair.*

76. **Mr. Pettigrove** (Australia) said that Australia had been involved in the work of UNCITRAL since its inception and continued to support the Commission's role in modernizing and harmonizing the rules of international trade. As an island continent, Australia was particularly affected by new developments in the law on carriage of goods by sea and it was therefore a strong supporter of the efforts of Working Group III (Transport Law) to produce a new instrument on the subject. The draft convention before UNCITRAL was admittedly complex and ambitious, covering many legal issues. A major one for Australia was the volume contract exemption in the draft convention, which allowed a potentially wide scope for parties to derogate from the mandatory liability regime. Australia noted that one of the Working Group's main aims had originally been to establish uniform international law and regretted to see a departure from that aim. His Government remained of the opinion that allowing parties to derogate from the mandatory provisions of the draft instrument would undermine its uniform implementation. Overall, however, Australia was optimistic that the Working Group would be able to finalize a practical and modern international instrument on the carriage of goods by sea and that it would be widely supported.

77. The Commission's work on secured transaction law was timely for Australia, which was currently undertaking a reform of its personal property securities law. Australia encouraged the Commission to approve the Legislative Guide on Secured Transactions when it resumed its fortieth session in December 2007. Australia also strongly encouraged the Commission to explore the application of secured transactions law to intellectual property rights and financial assets, which were important as a source of credit and should not be excluded from a modern law on the subject. However, the work on intellectual property rights and financial assets should not delay approval of the Guide by the Commission in December 2007. It might be undertaken as a separate exercise, with a view to a later amendment of the Guide.

78. With regard to the Commission's activities in the area of arbitration and conciliation, Australia welcomed the revision of the UNCITRAL Arbitration Rules. It had some concerns, however, about the provisions relating to interim measures presented recently to Working Group II and questioned whether their incorporation into the Model Law on International Commercial Arbitration would lead to greater uniformity in the implementation of the Law. His delegation looked forward to the final review and adoption of the revised UNCITRAL Model Law at the Commission's forty-second session, in 2009.

79. Australia appreciated the Commission's work on the treatment of corporate groups in insolvency and supported further development of the UNCITRAL Legislative Guide on Insolvency Law to address the issue. Lastly, Australia commended UNCITRAL for coordinating and cooperating with other international organizations. It particularly welcomed the Commission's decision to commend the use of the Unidroit Principles of International Commercial Contracts adopted by the International Institute for the Unification of Private Law.

80. **Mr. Ayua** (Nigeria) commended UNCITRAL on its adoption of the recommendations concerning the treatment of intellectual property, securities and financial contracts in the draft Legislative Guide on Secured Transactions. He also commended the Commission's progress in the areas of procurement, arbitration and conciliation, transport law and insolvency law, noting in particular the revision of the UNCITRAL Model Law on Procurement to reflect new practices, especially the use of electronic communications in public procurement, and the revision of the UNCITRAL Arbitration Rules. In regard to the Arbitration Rules, Nigeria supported the Commission's view that any revision should not alter the structure of the text, its spirit or its drafting style, and should respect its flexibility, without making it more complex. Rather, an effort should be made to simplify the rules and reduce their highly technical nature. The work on a legislative instrument on issues relating to the international carriage of goods by sea and on the treatment of corporate groups in insolvency was also commendable.

81. His delegation encouraged the Commission to take up deliberations on chapters I to VI of the draft Legislative Guide on Secured Transactions during its resumed fortieth session and to undertake other future work as planned. In order to avoid duplication of effort, which could undermine efficiency, consistency and coherence, Nigeria urged all other bodies involved in the field of international law to work in coordination with the Commission. His delegation appealed to Governments, organizations and individuals with the ability to do so to make voluntary contributions to the Commission's trust fund in order to enable it to continue providing technical assistance to developing countries.

82. **Mr. Yokota** (Japan) said his delegation believed that the UNCITRAL Model Law on Procurement of Goods, Construction and Services must be adjusted in response to changes in circumstances. With regard to arbitration and conciliation, Japan considered it important to modernize the UNCITRAL Arbitration Rules and looked forward to further progress in that endeavour. The Commission's efforts to produce new uniform laws on the international carriage of goods by sea were also of great importance. Once completed, the draft Convention on the subject would establish clear rules which would facilitate the resolution of problems not addressed by existing legal frameworks. Concerning insolvency law, Japan expected that Working Group V would continue its efforts towards ensuring the smooth and efficient disposition of insolvency and promoting its legal predictability through a careful examination of the treatment of corporate groups in insolvency.

83. The formulation of a legislative guide for security interests in goods, including legislative recommendations concerning security rights pertaining to movable property, would promote the provision of credit and enhance economic growth and international trade through the creation of a flexible and effective legal framework for security interests. His Government welcomed the adoption of many valuable recommendations on the draft UNCITRAL Legislative Guide on Secured Transactions during the first part of the Commission's fortieth session and hoped that the remaining recommendations would be adopted during the resumed session.

84. **Mr. Alday** (Mexico) welcomed the outstanding progress made towards the adoption of the draft Legislative Guide on Secured Transactions. His delegation was confident that similar progress would be made during the resumed fortieth session and that a final text would be ready to present to the Commission soon.

85. Mexico also welcomed the progress in identifying issues and formulating proposals for the revision of the UNCITRAL Model Law on Procurement of Goods, Construction and Services. It was important to take account of novel procurement practices and techniques that addressed current needs, while maintaining traditional approaches that would enable developing countries to continue benefiting from a legal framework that provided transparency and legal certainty and contributed to more efficient use of resources. His delegation was therefore pleased that basic principles such as functional equivalence,

information security, authenticity and confidentiality had been retained. Mexico supported the Commission's recommendation with regard to the incorporation of provisions on conflict of interest into the Model Law.

86. Concerning the revision of the UNCITRAL Arbitration Rules, his Government was of the view that respecting the structure, spirit, drafting style and flexibility of the text would help to ensure that the Rules continued to be applied and would also further the development of arbitration as a desirable means of dispute resolution. His delegation commended Working Group III for its rapid progress and encouraged it to continue examining the issues of arbitrability and the implications of electronic communications in online dispute resolution during its next session. Mexico welcomed the events planned to celebrate the fiftieth anniversary of the New York Convention, which would surely help to promote a greater understanding of that instrument.

87. Considerable headway had been made in addressing a number of difficult issues relating to the draft Convention on the Carriage of Goods [wholly or partly] [by Sea] and it appeared likely that the goal of presenting the draft Convention to the Commission for consideration in 2008 would be achieved. Nevertheless, some delegations had raised serious concerns about the issue of volume contracts. His delegation advocated a regime that would ensure greater legal certainty for shippers and allow explicit negotiation between the parties on the text of contracts. He encouraged Working Group III to take those views into consideration when it resumed its discussion of the issue.

88. In the area of insolvency law, Mexico supported the work on treatment of corporate groups in insolvency, which was intended to complement the Insolvency Guide and the UNCITRAL Model Law on Cross-Border Insolvency.

89. Regarding possible future work in the area of electronic commerce, work on the comprehensive reference document should continue with a view to establishing a favourable legal framework for e-commerce, which would be of enormous help in bringing clarity and certainty to such complex issues as electronic invoicing and authentication and cross-border recognition of electronic signatures. It would also facilitate the application of the United Nations Convention on the Use of Electronic Communications in International Contracts. As for future work in the area of commercial fraud, Mexico applauded the Commission's collaboration with the United Nations Office on Drugs and Crime on the study on fraud and the criminal misuse and falsification of identity, and was pleased that the Commission on Crime Prevention and Criminal Justice had submitted a draft resolution to the Economic and Social Council drawing attention to the problems identified by the study and encouraging Member States to take measures to address them. His Government pledged its collaboration in those efforts.

90. Lastly, his delegation looked forward to the report to be presented to the Commission in connection with the fiftieth anniversary of the New York Convention concerning the possibility of drafting a legislative guide to facilitate uniform interpretation of the Convention. That work was vital in order to preserve the efficiency of arbitration and develop a legal framework to ensure the enforcement of arbitral awards and decisions.

91. **Mr. Donovan** (United States of America) commended the Commission and its working groups for their continued recognition that, despite the liberalization of trade through international agreements, the failure to upgrade commercial law had meant that trade liberalization was less effective than it might be. The Commission's work helped to close the gap and reflected the practical achievements possible within the United Nations system. The Commission's principal achievement at its fortieth session had been the partial approval of the draft Legislative Guide on Secured Transactions. The Guide would eventually have over 200 legislative recommendations, which was a very significant achievement in an area considered by many international financial institutions to be crucial to reforms that would boost economic development in less developed and emerging states.

92. Progress had also been made on other topics. Working Group III (Transport Law) was moving towards the finalization of a multilateral treaty on the carriage of goods, which introduced harmonization to an area of trade law that had been lacking for over 80 years. In that connection, his delegation considered it important that the Working Group should stand by its decision to allow certain parties the right to negotiate terms of carriage freely, which would reflect existing maritime practices and modern commercial law.

93. He welcomed the fact that more States had signed the United Nations Convention on the Use of Electronic Communications in International Contracts, which would encourage the introduction of model laws that would facilitate electronic commerce without over-regulating it. His delegation also supported the continuing work on merging cross-border business insolvency law, with the recommendations on insolvency legislation approved by the General Assembly. In that connection, his delegation supported the parallel recommendations prepared by the World Bank with a view to producing a single standard for the Bank and the International Monetary Fund.

94. His delegation welcomed the Commission's continued efforts to tackle the growing problem of commercial fraud in such sectors as banking and finance, cross-border bankruptcy and maritime cargo documentation. The work, which did not fall conveniently into the core area of activity of any existing United Nations body, should continue to be undertaken in coordination with the United Nations Office on Drugs and Crime and other United Nations bodies, as appropriate.

95. Lastly, he commended the efficiency and the management approach that had enabled the Commission to double the number of its active working groups and projects, enhance its outreach through innovative websites and upgrade its technical assistance programmes, while remaining within its existing budget. In that connection, his delegation welcomed the discussion on ways of clarifying the Commission's working methods and supported the substantial majority that welcomed guidelines but wished to avoid excessively detailed rules.

96. **Mr. Brown** (United Kingdom) said that his delegation supported the work of the Committee of the Whole on amendments to the draft UNCITRAL Legislative Guide on Secured Transactions, in which it had participated, and of Working Group I (Procurement). As for Working Group II (Arbitration and Conciliation), which was currently working on a revision of the UNCITRAL Arbitration Rules, it was to be hoped that the Working Group would continue to focus on updating only those elements of the Rules that required amendment, in the light of experience, and that the work would be taken forward in a timely manner. His delegation, which was committed to representing the interests of United Kingdom shipping and other related industries, would continue to attend the meetings of Working Group III (Transport Law). His delegation also actively supported the work of Working Group V (Insolvency Law), which aimed to establish international guidelines and best practice on the treatment of corporate groups in insolvency. Lastly, he commended the Congress held after the fortieth session of the Commission; it had been an interesting and thought-provoking event that had led to lively debate.

97. **Ms. Vyas Millington** (Canada) said that the adoption of a large part of the draft UNCITRAL Legislative Guide on Secured Transactions represented an important step in the development of a global model for a modern secured-financing regime. Her delegation supported the Commission's decision to continue to focus on security rights in intellectual property and on certain types of securities; both aspects of the topic would be useful components of the draft Guide. Her delegation also noted the progress made on procurement issues, in the context of the revision of the UNCITRAL Model Law on Procurement, on insolvency issues and on transport law. With regard to the revision of the UNCITRAL Arbitration Rules, Canada remained interested in pursuing the issue of increased transparency in the arbitral process where one of the parties was a State.

98. It was to be hoped that some of the ideas put forward at the Congress following the fortieth session would become topics for consideration by the Commission. In that connection, she wished to comment on the proposals put forward by France with regard to the Commission's working methods. The success of UNCITRAL over the past 40 years could be attributed to its consensus-based methods of work. At the same time, since the Commission's membership had grown to 60, it would be worthwhile to introduce greater transparency and inclusiveness, particularly for the benefit of new member States. The Commission should not, however, be burdened with a rigid set of rules that would impede its role as the primary United Nations legal body in the field of international trade law. The secretariat, too, should be given some discretion. While some reform would be useful, therefore, a degree of caution was called for.

99. **Mr. Butel** (France), after commending the activities of the Commission at its fortieth session, said that it was important to clarify the rules of procedure in the interests of transparency at a time when the Commission's membership had grown. It was therefore

gratifying that his delegation's proposal in that regard had been warmly welcomed by the Commission.

100. His delegation commended the progress made on the draft UNCITRAL Legislative Guide on Secured Transactions, which struck a successful balance between common law and civil law. Since it was crucial, however, that UNCITRAL should be able to reconcile the two traditions, the Commission might do well to call on the services of independent experts, who could find the necessary compromise solutions.

101. His delegation also attached importance to the progress made on the draft Convention on the Carriage of Goods [Wholly or Partly] [by Sea], although it continued to have concerns about some aspects of the text. The carrier should surely be allowed greater freedom of contract in volume contracts than the current text provided.

102. The Commission's work on insolvency procedures as applied to corporations also had the potential to make a useful contribution to international trade law. His delegation was, however, concerned at how work on the topic was developing. The procedures under consideration should under no circumstances apply to a company that was solvent.

103. **Mr. Muchemi** (Kenya) noted that the Commission had been unable to finalize the draft UNCITRAL Legislative Guide on Secured Transactions and welcomed its decision to complete its work in December 2007. His delegation commended the progress made by Working Group I (Procurement) in updating the UNCITRAL Model Law on Procurement of Goods, Construction and Services and its Guide to Enactment to reflect new practices, in particular those resulting from the use of electronic communications in public procurement. Similar progress had been made by Working Group II (Arbitration and Conciliation) in reviewing the UNCITRAL Arbitration Rules in the interests of modernization and efficiency in arbitral proceedings.

104. Working Group III (Transport Law), which was preparing the draft Convention on the Carriage of Goods [Wholly or Partially] [by Sea], had successfully tackled such difficult issues as transport documents, shipper's liability for delay, time for suit, limitation of carrier's liability, the relationship of the draft instrument with other instruments and jurisdictional issues. Other substantive issues, such as freedom of contract in volume contracts, required further examination before the draft instrument was finalized, however, and his delegation hoped that the Commission would be in a position to complete its work by early 2008.

105. His delegation requested Working Group IV (Insolvency Law) to give further consideration to certain aspects of insolvency law, in particular substantive consolidation and its effect on the separate identity of individual members of a corporate group. He also urged the Commission to intensify informal consultations with judges and insolvency practitioners with a view to facilitating cross-border cooperation in insolvency cases.

106. He commended the work done on issues arising out of the Convention on the Use of Electronic Communications in International Contracts, particularly cross-border recognition of electronic signatures, cybercrime and commercial fraud. His delegation also commended the secretariat for its intensified dialogue with other organizations in the area of international trade law. Lastly, his delegation supported the proposal to undertake a comprehensive review of the Commission's working methods, especially with regard to the rules of procedure and participation by non-governmental organizations, as was the norm in other subsidiary organs of the General Assembly.

107. **Mr. Kuzmin** (Russian Federation) commended the results achieved during the first part of its fortieth session by UNCITRAL, which carried out its mandate most effectively. His delegation looked forward to the completion of the draft UNCITRAL Legislative Guide on Secured Transactions during the resumed session. It also commended the work of the other Working Groups.

108. **Mr. Zappala** (Italy) said that his delegation had closely followed the progress made by Working Group VI (Security Interests) in developing the draft UNCITRAL Legislative Guide on Secured Transactions, which could be an important step towards creating a global standard for modern secured-transaction laws and facilitating the availability of low-cost secured credit. In the interests of achieving the best possible results, he drew attention to the concerns expressed by the member States of the European Union in document A/CN.9/633 concerning the possibility of an overlap with other international instruments, such as the International Institute for the Unification of Private

Law (Unidroit) draft convention on harmonized substantive rules regarding intermediated securities. The draft convention would probably be finalized in September 2008 and it was of the utmost importance that the two instruments were fully compatible. By the same token, it was to be hoped that further study could be devoted to conflict-of-law rules applicable to security assignments and title transfer arrangements. Consideration should also be given to security interests in intellectual property rights.

109. The proposals by France on the Commission's working methods (A/CN.9/635) deserved careful attention, since they went to the heart of the question of how domestic legislation on trade should be harmonized and to what extent all the relevant parties should be involved. The Commission's enlargement called for a global reconsideration of all its procedures so that commonly agreed solutions that could be implemented by any legal system could be reached. Technical assistance on law reform would also benefit from reconsideration of basic issues relating to the introduction of trade-law instruments. Relevant commercial interests should participate in the Commission's work, in the form of non-governmental organizations, which should be transparently selected. A general debate on the issue should be held.

110. Lastly, his delegation congratulated the secretariat on the improvements made to the Case Law on UNCITRAL Texts (CLOUT) database, which was extremely useful for monitoring developments in the implementation of UNCITRAL instruments. Member States should continue to contribute information to the database in the interests of greater consistency in the implementation of UNCITRAL instruments.

*The meeting rose at 1 p.m.*

United Nations

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## Sixth Committee

**Summary record of the 12th meeting**
**Held at Headquarters, New York, on Wednesday, 24 October 2007, at 10 a.m.**

*Chairman*: Mr. Tulbure .............................................................. (Moldova)

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07-55804 (E)

*The meeting was called to order at 10.05 a.m.*

**Agenda item 81: Report of the United Nations Commission on International Trade Law on the work of its fortieth session** (*continued*) (A/62/17 (Part I))

1. **Ms. Celis** (Bolivarian Republic of Venezuela) expressed appreciation of the legislative guides and model laws produced by the United Nations Commission on International Trade Law (UNCITRAL) in the discharge of its function of unification and harmonization. Her delegation attached special importance to the work of Working Group II (Arbitration and Conciliation), especially since alternative solutions to commercial and investment-related disputes needed to be sought within the framework of a common methodology that would guarantee just and equitable decisions and be equally satisfactory to all States.

2. She looked forward to the completion of the Commission's work on a draft convention on transport law, which, through the incorporation of its norms into the domestic legislation of Member States, would contribute to the unification of maritime trade law. She noted, lastly, that her country had begun the process of internal consultations with a view to submitting in good time its comments on the draft text on indicators of commercial fraud.

3. **Mr. Baghaei Hamaneh** (Islamic Republic of Iran), having acknowledged the Commission's contributions to the progressive harmonization and unification of international trade law, called on the Commission to intensify its efforts concerning the provision of technical assistance and the dissemination of expertise. Particular attention in that regard should be paid to the developing and least developed countries, with a view to helping them upgrade their national legal capacities so as to allow them to foster trade by making use of advances in communication technologies.

4. His delegation commended Working Group II (Arbitration and Conciliation) for the progress made regarding the revision of the UNCITRAL Arbitration Rules. In that connection, care must be taken not to alter the structure, spirit or style of the text and to retain its flexibility. That work was important, since the Arbitration Rules had been used as a model by many countries in the enactment or modernization of their own legislation.

5. The working methods of UNCITRAL should be reviewed in the light of new developments in international trade. It was also imperative to find ways to ensure more effective participation of developing countries and of representatives of all legal systems in the Commission's activities. A number of General Assembly resolutions, including resolution 61/32, had indicated the importance of that matter for Member States.

6. The Islamic Republic of Iran had signed the United Nations Convention on the Use of Electronic Communications in International Contracts at the 2007 treaty event. The Convention, which would have force of law after ratification by Parliament, would help his country to adopt the domestic legislation needed in the field of electronic commerce to facilitate and promote the use of electronic communications in domestic and international trade. The Government had already prepared a comprehensive programme with that aim in mind. The enactment of specific legislation based on the UNCITRAL Model Laws on Electronic Commerce and Electronic Signatures had been one of the main achievements in that regard.

7. **Ms. Valanzuela Diaz** (El Salvador) said that El Salvador had begun participating as a member in the work of the Commission at its fortieth session earlier in 2007. It had held a seminar on international trade law sponsored by the United Nations with the support of the UNCITRAL secretariat and was engaged in the preparation of legislative bills based on UNCITRAL model laws in areas covered by four of the Commission's Working Groups, namely security interests, electronic commerce, arbitration and insolvency. In addition, it had recently ratified the Convention on Contracts for the International Sale of Goods and would soon be signing the Convention on the Use of Electronic Communications in International Contracts.

8. **Ms. Sabo** (Vice-Chairperson of the United Nations Commission on International Trade Law (UNCITRAL)) thanked delegations for their interest in and support for the current and future work of UNCITRAL. In particular, she welcomed the emphasis placed by many delegations on the importance of the Commission's work in relation to the rule of law. Noting the concerns expressed about certain projects and about the Commission's working methods, which would be conveyed to the Commission, she said that the Commission and its working groups were aware of

the issues in question and would be addressing them. However, she was certain that the statements made by Committee members would encourage UNCITRAL, with the support of its secretariat, to continue to fulfil its role as the core legal body in the United Nations system in the field of international trade law.

9. She encouraged all States to participate in the work of the Commission, since participation was not limited to members. She also encouraged them to consider becoming parties to the UNCITRAL conventions and adopting legislation based on the UNCITRAL model laws, both of which contributed to the harmonization of international trade law. Lastly, she welcomed the appreciation expressed for the work of the UNCITRAL secretariat.

## **Agenda item 84: Consideration of prevention of transboundary harm from hazardous activities and allocation of loss in the case of such harm** (A/56/10 and A/61/10)

10. **The Chairman** recalled that the item under consideration had been included in the agenda of the sixty-second session pursuant to General Assembly resolution 61/36. In 2001, the International Law Commission had completed the articles on prevention of transboundary harm from hazardous activities (A/56/10, para. 97) and had recommended to the Assembly the elaboration of a convention on the basis of the articles. In its resolution 56/82, the Assembly had taken note of the articles and had requested the Commission to resume its consideration of the liability aspects of the topic.

11. In 2006, the Commission had completed its work on the liability aspects and had adopted principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities (A/61/10, para. 66). It had recommended to the Assembly that it should endorse the principles by way of a resolution and urge States to take national and international action to implement them. In its resolution 61/36, the Assembly had taken note of the principles and commended them to the attention of Governments. It was necessary for the Assembly to decide at its current session how to proceed on the two aspects of the item, bearing in mind the recommendations of the International Law Commission.

12. **Mr. Sheeran** (New Zealand), speaking on behalf of the CANZ group of countries (Australia, Canada and New Zealand), said that the articles on prevention of transboundary harm from hazardous activities provided a valuable framework of obligations that should be recognized by States in whose territory or jurisdiction hazardous activities were undertaken. The question of what action should be taken with regard to the articles was a central issue at the current session.

13. The CANZ countries particularly welcomed the clear statement in the articles of the obligation of the State of origin to take all appropriate measures to prevent significant transboundary harm; the fact that the articles applied to activities not prohibited by international law which involved a risk of causing significant transboundary harm and to both land and maritime boundaries; the determination of factors for achieving an equitable balance of interests; the establishment of notification and consultation procedures; and the elaboration of a dispute settlement mechanism. Nonetheless, there was scope for further evolution of thinking on the subject. For example, it was important not to restrict risk situations artificially to those where there was a high probability of significant transboundary harm or a low probability of disastrous transboundary harm. There could be medium-risk situations in which preventive action would be justified. It was important to consider what action should be taken in such situations.

14. The Committee's decision in 2001 not to take action on the articles had reflected the need to weigh carefully the close relationship between the prevention and liability aspects of the topic. Now that the work on liability was complete, a decision on further action could be taken. The CANZ countries believed that, without broad and unified support, it would not be helpful to try to progress to a convention based on the articles. Rather, the General Assembly should welcome the articles and commend them to the attention of Member States without prejudice to their future use in a convention.

15. The General Assembly should also encourage States to be guided by the articles and the principles on the allocation of loss in the conduct of their relations, in particular when negotiating relevant agreements at the bilateral and multilateral levels. The CANZ countries would not object if Member States wished to place the articles on the agenda of a future session, preferably a session at which other Commission topics might come up for review. Such an approach would facilitate progress on an important topic and would

help to encourage a more consistent, coherent and fair international legal regime for transboundary harm arising out of hazardous activities.

16. **Ms. Holten** (Norway), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the articles on prevention of transboundary harm arising out of hazardous activities and the principles on allocation of loss from such harm were important contributions to the development of international law on prevention and civil liability. They did not, however, replace or reduce the responsibility of the State under international law. They provided a minimum standard for the development of further rules on prevention and liability and were also a source of valuable guidance in areas outside their specific subject matter of hazardous activities. In any case, where transboundary harm had been identified, that was a sign that the activities causing it had themselves been hazardous. As detailed rules and regulations were required at both the national and international levels for the effective implementation of the articles and principles, further cooperation should be encouraged among States to that end.

17. **Ms. Galvão Teles** (Portugal) said that the articles and the principles constituted a positive step towards the establishment of measures for prompt and adequate compensation to victims of transboundary harm and measures to minimize the harm and loss which could result from incidents involving hazardous activities. The question of the final form of the articles and the principles should be analysed in the light of the history of the topic and the purposes of codification and progressive development of international law, which should be harmonious and coherent.

18. Though it was largely accepted in the doctrine that international responsibility and the obligation to make reparation for wrongful acts were solid customary norms, that was probably not the case with liability for lawful acts, which was of a more exceptional nature and was dependent on conventional rules. It might, therefore, be unwise to advance too far on the topic of liability before any definitive action was taken with regard to responsibility of States for internationally wrongful acts. On the other hand, prevention of transboundary harm and international liability for loss arising from such harm should be treated as having equal legal nature and enforceability. Since the articles aimed to create a legal obligation for States to prevent transboundary harm, it was logical and equally relevant to impose on them the legal obligation to take the necessary measures to provide prompt and adequate compensation and to minimize the harm and loss which might result from incidents involving hazardous activities. When a State violated its obligation to take those measures, it should also incur international responsibility.

19. If the current will of the international community was to keep the principles on the allocation of loss in their current form — a set of principles endorsed by a General Assembly resolution — then the content of the articles and the principles would have to reflect their general, "soft-law" character more closely. In that case, the principles should be drafted as a true declaration of principles and not as a convention in disguise, and the articles on prevention would also have to be revisited in order to ensure coherence.

20. Her delegation hoped that it would one day be possible to have a single convention on international liability for injurious consequences arising out of acts not prohibited by international law, where the responsibility of States in that regard was adequately assumed and a real system of compensation was in place.

21. **Mr. Ma** Xinmin (China) said that the articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of transboundary harm arising out of such activities were good examples of the progressive development of the relevant rules of international law. They supplemented the current system of State responsibility and represented lex ferenda. The provisions contained in those two texts would help to reduce or prevent the occurrence of transboundary harm arising out of hazardous activities and would serve as a useful reference for States when they had to deal with such questions.

22. The articles and principles defined "State of origin" as the State in whose territory, or under whose jurisdiction or control, the hazardous activities were planned or carried out, but using territory or places under the de facto jurisdiction or control of a State as the sole criterion to define the State of origin was not entirely fair or reasonable. Further elements which should be borne in mind when defining the State of origin were the State of nationality of the operator, the host State of the major part of the operator's business

and the host State of the entity which ordered or controlled the relevant operations.

23. Provisions concerning exceptions to, or exemptions from, the obligation of prevention and the ensuing State responsibilities should be added to the articles on the prevention of transboundary harm in order to cover cases of force majeure, such as natural disasters or armed conflicts.

24. As to their ultimate form, both the articles and the principles could initially be included in a General Assembly resolution or a General Assembly declaration, or an annex thereto, with a view to their being fleshed out by State practice. When the right conditions obtained, consideration could then be given to the formulation of an international convention based on the articles or the principles.

25. As the largest developing country with a vast territory, China faced great risks of transboundary harm from hazardous activities. His Government had therefore consistently held that addressing such harm required international and regional cooperation and a joint response. It had already striven to find an appropriate response to the prevention of transboundary harm from hazardous activities and to the allocation of loss. Since it was steadfastly following the path of sustainable development and pursuing a policy of reducing the consumption of resources and preventing environmental pollution, it was always prepared to join the efforts of the international community to strengthen international law on the prevention of transboundary harm from hazardous activities and compensation for such harm.

26. **Mr. Malpede** (Argentina) said that his Government was in favour of drafting a convention which established not only an obligation of prevention, but also rules on the obligation of States to take the necessary measures to secure the compensation of victims of transboundary harm arising out of hazardous activities not prohibited by international law, in keeping with the tenets underlying the articles on prevention of transboundary harm from hazardous activities.

27. The draft principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities constituted a positive contribution to the progressive development of international law, which must guide States when they drew up national laws and regulations and concluded bilateral and multilateral treaties on the subject. The final form of the principles must fit in with that of the articles on prevention of transboundary harm from hazardous activities.

28. **Mr. Donovan** (United States of America) said that the principles on allocation of loss were a positive step towards encouraging States to establish mechanisms to provide and prompt compensation for victims of transboundary harm. They incorporated progressive ideas such as the responsibility of operator, the desirability of backup financial security measures, the importance of prompt response measures and broad consents of compensable harm and stressed the importance of national, bilateral, regional and sectoral arrangements to put them into effect. Similarly, the articles on prevention were a positive step towards encouraging States to establish mechanisms to address such issues as notification in specific national and international contexts.

29. However, his delegation considered that both texts went beyond the current state of international law and practice. Both were designed to encourage national and international action in specific contexts rather than form the basis of a global treaty. The United States accordingly opposed any efforts to make the principles mandatory or to convert them into a draft convention and likewise opposed the elaboration of a global convention on prevention of transboundary harm. The General Assembly should simply take note of them and encourage their use by States in specific situations.

30. **Mr. Brown** (United Kingdom) expressed general satisfaction with the overall direction of the work of the Commission and the Special Rapporteurs on the topic of transboundary harm. The United Kingdom welcomed the articles on prevention but saw little need for a convention on the subject, which was already covered by a number of binding sectoral and regional instruments. His delegation was prepared, however, to consider the matter with an open mind, should other States be convinced of the added value of such a convention. The United Kingdom agreed with the Commission that the outcome of its work on the liability aspects of the topic should be adopted as non-binding principles.

31. **Mr. Alday González** (Mexico) cited seven basic principles that bore on the question of transboundary harm, namely: State sovereignty over natural resources, but also State responsibility not to cause transboundary

environmental damage; the preventive principle; the cooperation principle; the sustainable development principle; the precautionary principle; the polluter-pays principle; and the principle of shared but differentiated responsibility. Some of those principles were already well-established elements of customary international law, while the others reflected emerging norms of international law. They could all be applied by all members of the international community. However, they had not all been incorporated into the principles on the allocation of loss, in particular the principle of sustainable development, which was indirectly linked to the topic of transboundary harm insofar as its underlying purpose was to ensure the enjoyment of natural resources for future generations. It would therefore be advisable to include it under principle 3, "Purposes".

32. His delegation agreed with the substantive aspects of the principles, particularly in regard to their scope, but considered that principle 2 on the use of terms was in need of clarification. It was vital to include in the definition of damage a definition of what was understood by significant damage to the environment so as to establish the limits within which the principles would be applicable.

33. The stipulation under principle 8 that the principles should be incorporated into each country's domestic law was of great importance and was directly linked to principle 6, which gave victims access to both international and domestic remedies. It should be noted, however, that principle 6 did not specify that victims of transboundary damage were under an obligation to exhaust domestic remedies before seeking international redress. That point might merit further consideration.

34. In addressing the issue of allocation of loss, the principles did not provide for cases where there was more than one State of origin and, for that reason, all the related provisions should be thoroughly reviewed. Moreover, the term "allocation of loss" was inadequate since one of the main functions of the liability regime was compensation for damage and not simply apportionment of loss and appeared to create a legal regime for such compensation distinct from the set of norms deriving from the polluter-pays principle. His Government would prefer that strict liability should be assigned to the operator, which would be in keeping with, international instruments in the area of civil liability and with the nature of hazardous activities.

35. The outcome of the work on liability should take the same form as that on prevention, so as to give them a normative as well as an exhortatory character, in view of the close link between the two regimes. Since the main purpose of the principles, according to principle 3, was to ensure prompt and adequate compensation to victims of transboundary damage, it was important that they take as their starting point the principle *sic utere tuo ut alienum non laedas*, recognized in particular by the International Court of Justice as a norm of customary international law, according to which no State could use its territory or allow its territory to be used in such a way as to cause damage to the territory, property or persons of a neighbouring State.

36. **Mr. Yokota** (Japan) endorsed the *sic utere tuo* principle and said that the obligation of prevention per se had become a part of customary international law. The articles on that part of the topic, in particular articles 6 and 12, offered a good model for the effective implementation of States' related obligations to seek prior authorization for hazardous activities and to exchange information concerning such activities; however, they could not be said to be a codification of well-established customary international law. It would therefore be premature to start converting them into a convention. It would be preferable to allow time for State practice to accommodate before any further action was taken. As for the principles on the allocation of loss, they appeared to have adopted the civil responsibility approach, including the polluter-pays principle, rather than an approach assigning entire responsibility to the State. The language used was the result of compromises, reached in order to adopt the text in the form of principles, not as a convention. If there was a move towards the elaboration of a convention, it would reopen the debate and have a negative impact on the text already adopted. His Government was therefore of the opinion that the principles should remain as they were for the time being. Lastly, if the articles on prevention were converted into a convention, the responsibility that could be attributed to the State for failure to comply with the obligations laid down therein might not be covered by the principles. Further thought might for that reason be given to the relationship between the two texts.

37. **Ms. Govindasamy** (Malaysia) said that clarification was required as to the level of

accountability for transboundary harm. According to the principles, the "operator" was responsible for such harm; it needed to be made clear whether the "operator" was exclusively the persons or entities involved in the commercial aspects of the hazardous activity or whether the State should be made responsible for the commercial activities of its citizens. It was also necessary to specify the threshold for "significant damage" in order for compensation to be awarded and to agree on a clear method for quantifying damage caused to the environment.

38. She raised the question, lastly, of the immediate measures to be taken by the State of origin to ensure prompt and adequate compensation. In the case of Malaysia, a person convicted of an offence under the 1974 Environmental Quality Act could be ordered to pay compensation to the victim as well as related costs; the Act had also put in place measures for prevention, conservation, restoration and recovery.

39. **Mr. Marri** (Pakistan) said that appropriate measures should be in place to ensure prompt and adequate compensation to natural and legal persons, including States, that incurred harm or loss because of hazardous activities. Indeed, a number of international, regional and national agreements had been concluded in that area. His delegation therefore acknowledged the importance of a convention on the issue. There was, however, a difference of opinion as to whether the convention should cover clearly circumscribed activities and not situations, such as air pollution, which was insidious and might have cumulative effects. It had been suggested that the activity must take place in the territory or under the jurisdiction or control of the State of origin, that it must carry a risk of causing significant transboundary harm and that there had to be a clear direct physical effect and causal connection between the activity and the harm suffered. More time would be required for member States to reach an agreement in that regard.

40. On the question of threshold for compensation, it might be helpful to establish an agreed list of transboundary activities falling within the scope of the proposed convention. Accordingly, a regime had to be negotiated between States that would be applicable to activities carrying a risk of transboundary harm.

41. His delegation considered that an early agreement should be reached on the principles. That could lead to the establishment of national and international mechanisms to address the outcomes of hazardous activities, including compensation aspects. Each State should take measures to ensure compensation for victims of transboundary harm, including through the establishment of industry-wide funds. As stated in principle 4, liability should be imposed on the operator without proof of fault.

42. He emphasized the importance of the response measures provided for in principle 5. There was also a need for an inter-State dispute resolution mechanism for the settlement of claims by individuals and States. Such disputes might concern determination of responsibility within a State, extent of damage within and outside a State and identification of victims or, where the environment had been harmed, the recipient of compensation. His delegation was open to discuss any proposal aimed at consolidating the work of the Commission on the important topic under consideration.

43. **Ms. Zabolotskaya** (Russian Federation), having commended the articles on prevention of transboundary harm from hazardous activities and the principles on the allocation of loss in the case of such harm, said that, with regard to the area covered by the principles, the diversity of opinion among States was largely due to the "sectoral" practice of treaty regulation of liability issues in that area. However, the number of States that were parties to such treaties was small. The international community was only just beginning to address such questions and was not always ready to enter into strict obligations under international law. At the same time, it was clear that a number of general trends in international and national legal regulation in that area had emerged. Her delegation therefore believed that the Commission had chosen the most appropriate form — a set of principles — for the outcome of its work on the subject.

44. Her delegation endorsed the Commission's decision not to include in the scope of application of the principles damage to the environment that occurred beyond the limits of national jurisdiction. It also endorsed the retention of the criterion of "significance" of harm and the decision not to attempt to elaborate an exhaustive list of activities.

45. Her delegation welcomed the formulation of principle 4, since it did not oblige the State to pay compensation to the victims of damage but rather to

take all necessary measures to ensure that compensation was available. That was a rational approach, since the principles dealt exclusively with activities not prohibited by international law. Her delegation likewise supported the imposition of strict liability on the operator. However, it should be noted that international legal instruments governing various aspects of liability usually provided for circumstances in which the operator was not held liable, for example, where the damage had occurred as a result of a natural disaster or military conflict or where the State of the operator had not taken all the necessary action with regard to the operator pursuant to international law. Such circumstances should be mentioned in the commentary.

46. Her delegation had some questions about individual provisions, such as the scope of the concept of damage to the environment per se. Nonetheless, it welcomed the principles overall and considered that they could be adopted by the General Assembly in the form of a declaration.

47. The principal value of the articles on prevention of transboundary harm from hazardous activities lay in the fact that they developed further the concept of prevention in the context of hazardous activities which involved a risk of causing transboundary harm. It was also important to establish a mechanism for the cooperation necessary to implement the principle of equitable balance of interests.

48. The provisions of article 8, paragraph 2, differed somewhat from the corresponding provisions of the 1990 Convention on Environmental Impact Assessment in a Transboundary Context. It was not completely clear whether the State likely to be affected by the activity should provide a final response within six months or whether it could provide an interim response.

49. Article 9, paragraph 3, should specify to what extent the State of origin was obliged to take into account the interests of the State likely to be affected if consultations failed to produce an agreed solution. Such an obligation should be based only on the aim of achieving an equitable balance of interests.

50. With regard to article 11, paragraph 3, the obligation on the State of origin to suspend for a reasonable period an activity which involved a risk of harm, if so requested by the State likely to be affected, could place an excessive burden on the State of origin for a number of reasons. First, article 9 did not establish any requirement to suspend the activity in question for the duration of consultations or for any other period. Second, the 1997 Convention on the Law of the Non-navigational Uses of International Watercourses, which was mentioned in paragraph 6 of the commentary to article 11, provided that, in a similar situation, the State of origin could be requested to refrain from implementing the measures in question. Moreover, that provision covered planned measures rather than measures already being implemented. Article 9, paragraph 3, could place a similar obligation on the State of origin to refrain only from a planned activity for a period of up to six months.

51. The articles and the principles each had independent importance, although they logically complemented each other. They could therefore be endorsed either separately or together. It might be most appropriate for them to be adopted by the General Assembly in the form of a declaration.

52. **Ms. Celis** (Bolivarian Republic of Venezuela) commended the work of the International Law Commission on the progressive development of international law and its codification, which advanced the cause of sovereignty and freedom of States to conduct and permit activities in their territory or under their jurisdiction or control. In particular, she commended the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities, which represented significant progress in the implementation of Principles 13 and 16 of the Rio Declaration on the Environment and Development.

53. **Mr. Bühler** (Austria) said that, in the light of statements by other delegations, his delegation believed that the time was not yet ripe to reach a consensus decision on the ultimate form of either the articles on prevention of transboundary harm from hazardous activities or the principles on the allocation of loss in the case of transboundary harm arising out of hazardous activities. The Committee should therefore defer a decision on the matter for three to five years. Meanwhile, the Secretariat should be requested to prepare a report on the views and practice of Member States in that regard.

54. **Mr. Pratomo** (Indonesia) said that the complexity of the topic of international liability was well demonstrated by the fact that the Commission had

decided to tackle the issue of the liability regime separately from that of the prevention regime. Although the topic was clearly still at the progressive stage of codification, however, it was of crucial importance, because the principles drew attention to the vulnerable nature of environments damaged even by lawful activities and, as a corollary, of the legal remedies for the victims. His delegation commended the Commission's approach of elaborating principles of a general and residual nature, thus allowing States the flexibility of designing specific liability regimes to suit particular activities. The principles therefore served as a set of general guidelines for the bilateral relations of States with regard to preventing transboundary harm caused by hazardous activities within their jurisdictions. Practical implementation measures deriving from the principles would thus be for the States concerned to adopt by mutual agreement, and specific compensation arrangements concluded between them would take precedence over the principles, in accordance with the residual nature of the latter.

55. Since there were still divergent views on some core issues in the principles, particularly in relation to mechanisms for the provision of prompt and adequate compensation, his delegation considered that the principles deserved further reflection. One issue that should be addressed was the inconsistency between the use of the word "operator" in principle 2 (g), where it referred to a natural person, and principle 4, paragraph 2, which equated the operator with an entity, which was an artificial person. The issue was pertinent in situations where the entity concerned was a multinational corporation, since such a corporation might also have legal standing in a State different from the State in which the transboundary harm occurred. It was common for multinational corporations to relocate their hazardous industries in developing countries for a number of reasons.

56. Although a developing State might profit from the activities of a multinational corporation, it would be unfair to allocate to it residual liability for transboundary damage as the State of origin, particularly since national industry funds were not always available in developing States. The imposition of residual liability on the State, which would be valid in theory, would only create problems in practice. The operator should bear the primary responsibility in any regime of allocation of loss, because the operator, not the State, profited from the operation. In that connection, his delegation believed that principle 7, paragraph 2, which dealt with the establishment of industry funds at the international level to supplement or replace State funds, should be reformulated in order to reflect common and differentiated responsibility, taking into account the operations of multinational corporations.

57. The language of principle 6 should be revisited in order to reflect the fact that the principles constituted a set of general guidelines. In particular, principle 6, paragraph 3, which provided for alternative mechanisms for claimants seeking redress in cases of a possible multiplicity of claims, thus avoiding forum shopping, should be clarified. Although the proposition had some merit, State practice was not uniform in that regard. Other elements that should be incorporated into the text were exemption clauses due to force majeure and the cases in which the transboundary harm emanating even from carefully conducted activities was unforeseeable and untraceable.

58. More time was needed for reflection on the principles before a decision was taken on the form that they should take. Moreover, the topic should be considered in conjunction with the issues of prevention and State responsibility. A working group might be established by the Committee to clarify some of the difficulties highlighted by many delegations. Only after such a step could well-founded decisions be taken.

**Agenda item 78: Responsibility of States for internationally wrongful acts** (A/62/62 and Corr.1 and Add.1 and 63 and Add.1)

59. **The Chairman** recalled that the draft articles on responsibility of States for internationally wrongful acts had been adopted by the International Law Commission at its fifty-third session in 2001. The Commission had recommended to the General Assembly that it should take note of the draft articles in a resolution, to which they would appear as an annex. It had further recommended that the General Assembly should, in view of the importance of the topic, consider, at a later stage, the possibility of convening an international plenipotentiary conference to examine the draft articles with a view to concluding a convention on the topic. General Assembly resolution 56/83 had taken note of the articles, the text of which had been annexed to the resolution, and commended them to the attention of Governments, without

prejudice to their future adoption or other action. In 2004, General Assembly resolution 59/35 had once again commended the articles to the attention of Governments, which had been invited to submit their comments on any future action. The resolution had also requested the Secretary-General to prepare an initial compilation of decisions of international courts, tribunals and other bodies referring to the articles and to invite Governments to submit information on their practice in that regard. Comments and information received from Governments were contained in document A/62/63 and Add.1 and the compilation of decisions of international courts, tribunals and other bodies in document A/62/62 and Corr.1 and Add.1.

60. **Mr. Rose** (Australia), speaking on behalf of the CANZ group of countries (Australia, Canada and New Zealand), said that the General Assembly was again faced with the question of whether to negotiate the articles on the responsibility of States for internationally wrongful acts, as a convention, adopt them in the form of a resolution or declaration, or simply to take note of them, with no further action. For the CANZ group, it was a question not to be dismissed lightly. It was clear from the Secretary-General's report (A/62/62/Corr.1 and Add.1) that a growing body of practice existed on utilizing the articles. The International Court of Justice had referred to them on a number of occasions, including, most recently, in its decision on the *Application of the Convention on the Prevention and Punishment of the Crime of Genocide* (*Bosnia and Herzegovina v. Serbia and Montenegro*) in February 2007. Altogether, there had been some 130 judicial or quasi-judicial references to the articles and the commentaries.

61. It would not be helpful to negotiate the articles as a convention, since such action might upset the delicate balance of the text. There was a danger that the current force and practical authority of the articles would be weakened through a convention that did not achieve wide adherence. The best course of action would be to adopt a resolution endorsing the articles and attaching them as an annex. In that way, their integrity would be maintained.

62. **Ms. Sotaniemi** (Finland), speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden), said that the articles on responsibility of States for internationally wrongful acts constituted one of the International Law Commission's most significant projects. The fact that, according to the Secretary-General's report, there had already been 129 instances in which international courts, tribunals and other bodies had referred to the articles as an established rule of international law or an expression of accepted principles of international law reflected their impact on international dispute settlement. Indeed, the articles had become the most authoritative statement available on questions of State responsibility. Attaching the articles to a resolution had not only been an appropriate form for them to take, in view of their subject matter but had given them the strongest possible authority. Although there might be different views on specific details, the articles reflected a widely shared consensus. A diplomatic conference aimed at producing a convention might jeopardize the delicate balance that currently existed. It would therefore be inadvisable to embark on negotiations leading to a convention.

63. **Mr. Gouider** (Libyan Arab Jamahiriya) said that practice of some States and references to the articles by such bodies as the International Court of Justice in its advisory opinion on the *Legal Consequences of the Construction of a Wall in the Occupied Palestinian Territory* constituted additional reasons to adopt a convention. Both General Assembly resolution 56/83 and the Special Rapporteur had suggested the possibility of convening an international conference of plenipotentiaries to examine the draft articles. To refrain from doing so because of political sensitivities would be to ignore the need to develop international law. Such sensitivities had not prevented the negotiation and entry into force of numerous other international agreements that touched on political issues and had become major sources of international law.

64. **Mr. Sen** (India), said that the articles on responsibility of States for internationally wrongful acts had a number of merits: they were concise and the concepts involved had been modified for ease of implementation. They also exhibited sensitivity to the needs of States in difficult circumstances.

65. The Commission had replaced the concept of State crimes by the concept of a serious breach of an obligation arising under a peremptory norm of general international law. The complexity of the concept of countermeasures, the synergy between countermeasures and the provisions on attribution of State conduct, the timing of a breach of international law, circumstances precluding wrongfulness, the remedies available for

injuries and the legal standing to invoke responsibility all merited a mention, since some of the articles concerned incorporated what had been termed "constructive ambiguity".

66. He recalled that the 12 State crimes listed in the original draft had been whittled down to six. After a heated debate on the topic, the Commission had made what might seem the anticlimactic decision to replace State crimes by breaches of *jus cogens* and *erga omnes* rules, which were customary imperatives of international law. The result was that the serious breach of obligations arising from a peremptory norm of international law was not very different from other wrongful acts, except there was an obligation to bring the breach to an end, and other States, apart from the injured State, were entitled to invoke State responsibility, subject to certain limitations.

67. There were justified fears that international law should not run ahead of reality, since the international legal system was still decentralized. It would therefore, be prudent to maintain the careful balances in the text that the Commission had struggled for years to achieve. A topic that had taken many years to come to fruition would best serve the needs of the international community only if applied with great care. For the time being, it was enough to witness the reception of the articles into international law through State practice, the decisions of courts and tribunals and the writings of jurists.

68. **Mr. Tavares** (Portugal) said that, in the six years that had passed since the General Assembly had taken note of the articles on responsibility of States for internationally wrongful acts, the international community had been given two opportunities for further reflection. In all, it was almost 60 years since the International Law Commission had embarked on what had certainly been one of its most important projects. His delegation therefore felt that the time was ripe to make a decision on future action.

69. Although Portugal recognized that, as shown by the comments contained in the Secretary-General's report (A/62/63 and Add.1), States held different views on the form that the articles should take, with some supporting the adoption of a convention, others favouring postponing consideration of the issue and yet others favouring the adoption of the articles as part of a General Assembly resolution. The number of States that had submitted comments was, however, very limited and his delegation therefore called on all Member States to express their views in written or oral form before the Committee.

70. Portugal continued to believe that State responsibility was an area of international law that deserved to be incorporated into a legal instrument that would contribute decisively to respect for international law and peace and stability in international relations. Indeed, the articles could and should constitute the third pillar — after the Charter of the United Nations and the Vienna Convention on the Law of Treaties — of the international legal order set up after the Second World War. States should not be overcautious about taking such a step, since the articles were concerned only to establish the consequences of internationally wrongful acts, not to provide for a definition of a wrongful act in itself. State responsibility was concerned only with the secondary and not the primary roles defining the obligations of States. If agreement could be reached, the articles could take the form of a contractual instrument. Convincing evidence for the opportunity — and the fundamental need — to proceed along those lines could be found both in State practice and in the decisions of international courts and tribunals, including the International Court of Justice. It would, furthermore, be senseless to discontinue the development and codification of the topic, yet to proceed with others like diplomatic protection or liability and responsibility of international organizations, when the principles guiding the development of those topics were the same as those applying to State responsibility. The Committee should therefore start the process of adopting the articles as a binding international convention. In order to give time for further reflection, however, it might be appropriate to begin by setting up an ad hoc committee with a mandate to discuss the issue, including the possibility of elaborating an international convention.

71. **Ms. Pino Rivero** (Cuba) said that the articles on responsibility of States for internationally wrongful acts, which had been widely accepted by States after their long gestation, constituted a fine example of the codification and progressive development of international law. The responsibility of a State for wrongful acts, whether actions or omissions committed, in breach of its international obligations, must be regulated by a binding instrument, in order to rein in unilateral action by States contrary to the Charter of the United Nations and the principles of

international law. It would also help to protect States that were victims of unlawful acts committed by other States, which could include such serious actions as aggression or genocide.

72. The articles provided a basis for starting negotiations aimed at the adoption of a legally binding international instrument. An international convention would ensure the efficacy of its mechanisms and proper respect for the institutions that would be established.

73. **Ms. Rodríguez-Pineda** (Guatemala) said that since 2001, when the General Assembly had taken note of articles on the responsibility of States for internationally wrongful acts, the content of some of those articles had been incorporated into customary international law and had formed the basis of State practice and the decisions of international courts. That meant that significant progress had been made in the field in question, because all States had become bound by the norms set in the articles, whose exact meaning and scope could be elucidated by consulting the relevant commentaries.

74. Nevertheless the time had come to codify the subject matter in the form of a multilateral universal convention, since conventions constituted one of the most important sources of international law and helped to fuse custom, practice, general legal principles and existing case law. Sources of law explaining what the law was and where it could be found were vital for the regulation of international affairs and were the main factor promoting the stability and adaptation of law. That was why a convention on State responsibility would increase legal certainty. In addition, codification of the articles would induce States to seek much greater unity in their pursuit of the fundamental values embodied in the Charter of the United Nations, such as democracy, multilateralism, human rights and the rule of law. A convention would also constitute a source of legitimacy to guide the conduct of States.

75. The rules in the articles concerning attribution of conduct to a State, exceptions and reparation were of prime importance for the harmonization of international law and its application by international courts, since when the latter had to hear and try cases involving State responsibility, they needed clear and uniform guidelines in order to avoid legal inconsistencies or political interpretations. For all those reasons, a convention on State responsibility for internationally wrongful acts would strengthen the provisions of the Charter of the United Nations. In that connection, it was, however, necessary to remember that the obligations of Member States under the Charter would always take precedence when they conflicted with any obligations assumed by those States under other international agreements.

76. Codification would thwart the temptation to expand certain basic concepts such as "self-defence"; such redefinition could heighten the probability of armed conflicts and serve as a basis for the use of force in circumstances where there was no threat to States. Furthermore a convention would be beneficial in that it could provide a mechanism for third-party settlement of disputes whose binding decisions would guarantee the protection of the rights and obligations flowing from existing provisions.

77. International peace and security must rest on considerations of universal justice if the ideals prompting the establishment of the United Nations were not to be betrayed. In recent years, States had proved unable to reconcile their national interests with the demands of existing international law, especially in the fields of international humanitarian law and human rights.

78. The articles on State responsibility for internationally wrongful acts were ripe for embodiment in a convention. Such action would be in keeping with Article 13 of the Charter, which laid down that the General Assembly should "encourage the progressive development of international law and its codification". The International Law Commission had produced a work of the utmost importance: the challenge facing the Sixth Committee was to arrive at a text reflecting rules on State responsibility which were acceptable to the international community as a whole without undermining or endangering the Commission's achievements. While she hoped that it would not be necessary to wait a further three years before adopting a decision to draft a convention, her delegation was prepared to explore all possible avenues leading to progress on the subject.

79. **Mr. Guerrero** (Mexico) said he was pleased to note that the International Court of Justice had referred on many occasions to various principles contained in the articles on the responsibility of States for internationally wrongful acts and had in some cases referred explicitly to the articles themselves.

Conversely the principles applied by international courts when assessing compensation were faithfully reflected in the articles. The articles' function as a source of momentum for international standard-setting in the field in question had not ended; it was imperative that the international community should codify the rules on State responsibility.

80. The articles represented one of the most important developments of international law in recent decades. They entailed a transition from a restrictive view of international responsibility basically confined to the protection of persons and their assets in foreign States to a legal approach making international rights and obligations enforceable within a centralized system — in other words, a transition from the perception of *jus gentium* as a set of bilateral contractual arrangements to the building of a genuine universal legal order.

81. Only a legally binding instrument would equip the international community with clear rules on how to remedy breaches of international law. To that end, the General Assembly should convene a diplomatic conference to adopt a convention on the responsibility of States for internationally wrongful acts, in which Member States would participate on an equal footing. The relevance of a binding international instrument on that subject was clear on looking at the true scope of the articles formulated by the Commission. Since the bases for international responsibility was a subject cutting across all areas of international law, the proper codification of the draft articles would make it possible to resolve legal conflicts arising in various contexts on account of acts of States. Moreover a binding legal instrument would alone offer the requisite guarantees and certainty that injured States would obtain reparation. A mere declaration would not supply such guarantees or certainty.

82. A General Assembly declaration which did no more than incorporate the articles would freeze the provisions in the version presented by the International Law Commission and would not afford Member States any opportunity to discuss them. That would result in rules which, as they stood, might not be considered by some States to be the applicable law. There would therefore be little or no likelihood that those States would continue the process of endorsing and implementing those rules through compliance with them.

83. Conversely, consideration of the articles by an intergovernmental body would enable States to continue the work of codification and progressive development initiated by the Commission until they produced rules which stood a real chance of being implemented and observed by the international community. Similarly, the adoption of a convention would help to stabilize norms without restricting the formation of customary law. Indeed, the adoption of a convention might strongly influence the creation of customary norms.

84. The text prepared by the Commission certainly constituted a valuable basis for negotiations. It was therefore incumbent upon Member States to complete the codification of rules on that subject by adopting a binding instrument which perfected the provisions put forward by the Commission and made them acceptable to the international community as a whole. Such action would greatly help to strengthen the international legal system.

85. **Mr. Ma** Xinmin (China) said that the articles on responsibility of States for internationally wrongful acts not only made an important contribution to the progressive development of international law but also were of significance for the safeguarding of international relations and the maintenance of stability in the international legal order. The articles had been closely studied by Governments and international judicial bodies, which had begun to turn to them for guidance in their practice and proceedings.

86. Yet while the articles as a whole represented a commendable effort, they nevertheless failed to address a number of issues. For example, while his delegation supported the definition of responsibility contained in article 1, it believed that certain matters should be clarified. Specifically, it should be determined whether wrongful acts, either intentional or caused through negligence, and the existence of injury were necessary conditions for State responsibility; whether the relationship between an internationally wrongful act and the injury had to be one of causality; and whether a threshold of gravity existed for internationally wrongful acts.

87. His delegation continued to believe that articles 48 and 54 should be deleted. In a spirit of flexibility, it was prepared to retain them, if the majority of States wished to do so, but proposed that they should be amended to provide for the establishment of a

collective authorization mechanism that would allow concerned States other than the injured State to invoke State responsibility and take legitimate measures, so long as those non-injured States recognized the authority of the United Nations or another international body that represented the collective interests of the international community. In the case of a breach that threatened international peace and security, for example, care should be taken not to undermine the authority of the Security Council. It was not in the international community's interest to give non-injured States free rein when it came to invoking State responsibility and taking legitimate measures, as that practice could easily be abused.

88. His delegation welcomed the distinction drawn in the articles between serious breaches of an obligation under a peremptory norm of international law and general breaches of an obligation under general international law. However, the articles made no distinction between the consequent responsibility entailed by the two types of breach; for example, serious breaches did not entail greater responsibility. Moreover, the legal obligations set out in article 41 did not arise solely in the context of serious breaches. The articles should therefore include provisions spelling out in detail the meaning of serious breaches and the proportional responsibility to be attributed for different types of breaches.

89. His delegation's position on countermeasures had not changed since the fifty-sixth session. The provisions on countermeasures in Part Three, chapter II, of the articles were intended mainly to ensure that responsible States complied with their international obligations. In turn, all injured States had an obligation to ensure that any countermeasures they adopted were in strict accordance with the legislative purpose of the articles.

90. Adoption of the articles in final form should be a phased process, the first step of which might be the adoption of a General Assembly resolution, perhaps with a declaration attached to it. That text could serve as a reference document for State and international judicial bodies. His delegation was prepared to consider the eventual adoption of an international convention having its basis in a General Assembly resolution or declaration on the subject. Should the Assembly decide to adopt a resolution with an annexed declaration, the text of the articles should be supplemented by a preface and a final provision on conflict resolution.

91. **Mr. Fitschen** (Germany) said that the articles on the responsibility of States for internationally wrongful acts had been applied in State practice and referred to in court decisions in many countries. As the compilation of decisions of international courts, tribunals and other bodies (A/62/62 and Add. 1) and the comments of Governments (A/62/63 and Add.1) showed, there was wide recognition that they expressed customary international law.

92. Any attempt to transform the text contained in General Assembly resolution 56/83 into a convention would, however, entail some risk, because negotiation of the text of a convention at a diplomatic conference would almost certainly lead to the reopening of controversial issues and might endanger the support which had prevailed hitherto.

93. While it was, of course, true that a convention would carry more legal weight than the articles, its more obligatory character might be the very reason why a large number of States might refrain from becoming a party to it, since they might not wish to subscribe to a particular individual rule it contained. A convention signed and ratified by a very small number of States would probably be of less practical relevance than the current General Assembly resolution which, although it was not actually binding, served as guidance in practice. As it stood, the International Law Commission's text was referred to by courts and tribunals and it was therefore contributing quite successfully to an evolving pattern of State practice and to the reinforcement of customary international law. That process might end if a controversial convention were to be ratified by only a few States.

94. **Mr. Bühler** (Austria) said that his Government would be in favour of the adoption of a convention on the responsibility of States for internationally wrongful acts only if there were a prospect of it really being ratified and accepted. In that connection, he drew attention to the fact that while some States were rather reluctant to adopt a convention on that subject, others had pointed to the close linkage between the articles on State responsibility and those on diplomatic protection and were of the view that the fate of both sets of articles should be decided in tandem. The outcome of the International Law Commission's work on the related topic of the responsibility of international

organizations would also have to be considered in that context.

95. Moreover the drafting of a convention on State responsibility would require additional substantial efforts by States, especially with regard to the question of dispute settlement, which might prove highly controversial. If it turned out that a convention was not yet feasible, the question should be reconsidered by the General Assembly in the future when the adoption of the articles as a convention, or in any other appropriate form, might be possible. At all events, care should be taken not to alter the careful balance struck in the Commission's articles and not to make substantive amendments which would jeopardize the results already obtained.

96. **Mr. Zyman** (Poland) said that the articles on the responsibility of States for internationally wrongful acts were in the process of consolidation. Reference had been made to them in the judgments and opinions of the International Court of Justice and the European Court of Human Rights. They were also frequently quoted in the dispute settlement procedure of the World Trade Organization. Furthermore the International Law Commission's work on State responsibility had been widely acclaimed by leading experts and legal writers.

97. It was, however, doubtful whether the adoption of a legally binding instrument in the form of a convention was currently an achievable goal. Moreover the negotiation of a convention could endanger the delicate balance achieved in the articles, reopen old debates and introduce possible contradictions between the two texts, thereby weakening the articles. If the resultant convention were then to be ratified by very few States that would have a "decodifying" effect and reduce the high legal standing and impact attained by the articles. More time was therefore required for further consolidation of the text with a view to adopting a truly universal legal instrument in the future.

98. Even in their non-binding form, the articles on State responsibility, one of the most significant achievements of the International Law Commission, could buttress the rules of international law and shape State practice, legal writings and the decision of international and national judicial and arbitration bodies. They had already gained widespread recognition and approval, and their impact was certain to increase as time passed. That process should not be put at risk. Nevertheless there was merit in keeping the item on the General Assembly's agenda. A resolution at the current session could once again commend the articles on the responsibility of States for internationally wrongful acts to the attention of Governments and express satisfaction that the articles were extensively referred to in legal writings and by international courts and tribunals and other bodies in their decisions and opinions. Such positive wording could be interpreted as a further step towards the gradual transformation of the draft articles from soft law into hard law.

99. **Mr. Arévalo** (Chile) said that, since the regulation of the legal consequences of wrongful acts was central to the international legal system, the articles on the responsibility of States for internationally wrongful acts should be adopted as a convention. The codification and progressive development of international law should generally culminate in the adoption of a convention, as it had done in the past in respect of topics of such cardinal importance as diplomatic and consular relations, the law of treaties and the law of the sea.

100. That did not mean that other formal sources of international law, in particular custom, were of no value; on the contrary, many of the precepts in the articles were part of customary international law and many of the articles were already relied upon in international courts and tribunals. Nevertheless a convention would increase legal certainty as to the content of the obligations of States and would encompass advances in international law. Indeed it was vital that a legally binding instrument should embody the articles' progressive development of international law in areas such as countermeasures and breaches of norms which protected the interests of the international community as a whole and which transcended bilateral relations between the offending and the injured State.

101. Nevertheless, since some elements of the articles deserved more consideration, the time had not yet arrived for the convening of a conference to adopt a convention. Such a conference would in fact require very careful preparation. His delegation was therefore prepared to explore other means of making progress in the meanwhile, for example through the establishment of a working group within the Sixth Committee to examine unresolved issues. It would not be enough to adopt a resolution merely taking note of the adoption of the articles and thanking the International Law

Commission for its work in that respect, because it was necessary to make genuine headway towards the codification and progressive development of such an important subject as State responsibility.

102. **Ms. Govindasamy** (Malaysia) said that some of the articles on the responsibility of States for internationally wrongful acts would benefit from further clarification. That was true of article 7 concerning the *ultra vires* acts of State organs or entities. While the conduct of an organ or person empowered to exercise governmental authority should be deemed valid, it would be unjust to attribute conduct to a State when the conduct of an organ or person had clearly exceeded their authority.

103. Her Government shared the view that no further action should be taken on the articles for the time being, so that their subject matter could evolve through State practice and jurisprudence. It was likewise concerned that any move towards adopting the articles in the form of a convention would reopen negotiations on their text and weaken the current consensus on their scope and contents. As the compilation of decisions of international courts, tribunals and other bodies (A/62/62 and Add. 1) showed, there appeared to be growing acceptance of the articles and it could therefore be concluded that, in their current non-binding form, they provided sufficient guidance to States, international courts and tribunals and legal writers.

*The meeting rose at 1 p.m.*

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## Sixth Committee

**Summary record of the 13th meeting**
Held at Headquarters, New York, on Tuesday, 23 October 2007, at 3 p.m.

*Chairman*: Mr. Tulbure.................................................. (Moldova)

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*The meeting was called to order at 3 p.m.*

**Agenda item 78: Responsibility of States for internationally wrongful acts** (*continued*) (A/62/62, A/62/62/Corr.1, A/62/62/Add.1, A/62/63 and A/62/63/Add.1)

1. **Mr. Yoo** Hong-keun (Republic of Korea) said that the question of responsibility of States for internationally wrongful acts was of major significance in the relations of States and was also closely linked to other topics of concern to the Committee, such as diplomatic protection and the responsibility of international organizations. His delegation was pleased to see that the draft articles were increasingly being recognized in State practice, by decisions of international courts and by international lawyers as the most authoritative statement of customary international law in the field. However, the Republic of Korea took the view that it would not be advisable at the current time to enter into negations on a convention on State responsibility. Rather, it would be preferable to wait to see how State practice evolved as a result of the application of the draft articles. The topic could then be revisited by the General Assembly in a few years' time.

2. **Ms. Telalian** (Greece) said that the codification and progressive development of the rules on responsibility of States for internationally wrongful acts was the greatest achievement of the International Law Commission to date, as the articles dealt with the most important aspect of international law. The main positive aspects of the draft articles were that they codified customary rules on State responsibility, thus filling a huge gap in existing international law; that they strengthened the notion of the international community as a whole; that they significantly promoted the notion of peremptory norms of international law as envisaged in the Vienna Convention on the Law of Treaties and the regime of responsibility for grave violations of such norms; and that they dispensed with the notion of damage as a condition for the attribution of responsibility.

3. However, the draft articles did suffer from certain shortcomings. For example, no distinction was drawn between obligations of means and obligations of result, which was of undoubted importance for the law of State responsibility. In addition, unilateral action, through countermeasures, took precedence over the obligation to settle disputes peacefully, and the articles included no provision for a procedure for the settlement of disputes arising out of their interpretation or application. The positive elements, however, far exceeded the shortcomings, which, moreover, might gradually be overcome by State practice.

4. There was no doubt that the rules on State responsibility adopted by the International Law Commission should evolve into an international convention, which would make the customary rules clearer and ensure the progressive development of international law. Greece therefore supported the convening of a diplomatic conference. In their current form, the draft articles reflected a carefully achieved compromise. What remained to be done was to draft the preamble and the final clauses of a convention, including a mechanism for the settlement of disputes relating to the interpretation and application of its provisions. The General Assembly should establish a working group for that purpose.

5. **Mr. Siddiqui** (Pakistan) said that the Secretary-General's reports (A/62/62 and Add.1) demonstrated that the draft articles were of great legal value and represented a step forward in the codification of international law. Pakistan was in favour of a substantive discussion on the draft articles in order to promote better understanding and thorough evaluation thereof. Pakistan had noted that the articles did not define "wrongful act" but mainly focused on State responsibility. That would make it easier for States to move forward with the consideration of the articles.

6. His delegation understood that the articles had been adopted on the basis of a compromise and that some remained controversial, as had been highlighted by some recent judgments of the International Court of Justice. It was well-established that if an act was committed by a State organ it was attributable to the State, as the Court had stated, referencing article 4 of the articles on State responsibility, in its 2007 judgment in the Genocide case (Bosnia and Herzegovina v. Serbia and Montenegro). However, the issue of State responsibility when an act was committed under State "direction or control" would need more time to crystallize. In the same case, on the issue of responsibility for "complicity in genocide", the Court, referring to article 16, had set aside "the hypothesis of the issue of instructions or directions or the exercise of effective control, the effects of which, in the law of international responsibility, extend beyond complicity".

7. On the question of force majeure, covered under article 23, Pakistan supported the view that paragraph 2 could be deleted, as it merely stated an established general rule. In 2004 the General Assembly had postponed consideration of the articles on State responsibility until the current session. It was to be hoped that the Sixth Committee would not recommend a further postponement. In principle, his delegation supported the idea of an international convention on State responsibility, which would serve as a guide for State conduct. However, it recognized the need for careful consideration of the articles before a convention was adopted. Accordingly, Pakistan recommended that the General Assembly should set up an ad hoc committee to explore the possibility of drafting a convention on the basis of the articles.

8. **Mr. Virella** (Spain) said that what had occurred in the years since the adoption of the draft articles on State responsibility in 2001 made it clear that they reflected customary international law. They enjoyed wide acceptance and were also an important reference in the practice of the International Court of Justice and other judicial organs. In principle, Spain supported the idea of a future convention, but believed that it would be premature to undertake its development at the current juncture. His delegation would not want the negotiation of a convention to jeopardize the fragile balance that had been struck with respect to the draft articles or to threaten the progress achieved. The matter should be re-examined by the General Assembly in the near future.

9. **Mr. Donovan** (United States of America) said the United States believed that no further action was needed on the issue of State responsibility for internationally wrongful acts. The work of the International Law Commission on the topic had made a valuable contribution to international law and, as was borne out by the Secretary-General's reports (A/62/62 and Add.1), the draft articles had shown themselves to be useful in their current non-binding form as a guide to States and other international actors on what the law currently was and how it might be progressively developed. His delegation doubted the utility of any further work on the topic and would be opposed to any effort to convene a diplomatic conference for the adoption of a convention on State responsibility.

10. **Mr. Butel** (France) said that the question of State responsibility for internationally wrongful acts was really a question of the authority of international law, which was the foundation for peace and for the development of States. France was of the view that a convention on the subject would be the logical and desirable outcome to the work undertaken by the International Law Commission, although that did not mean that France approved entirely of the draft articles in their current form, as was evident from its earlier statements on the matter. Still, France was convinced that the development of a convention would help to clarify the status and contribute to the development of international law in an area that was essential to the preservation of peaceful relations among States and peoples. States should, however, have the opportunity to express their views on the way in which some customary rules might be retranscribed and on the usefulness of some of the proposals for development of the law put forward by the International Law Commission.

11. General Assembly resolution 56/83 should not be regarded as an invitation to abstain from action on the subject, but as a step leading to the convening of a diplomatic conference and to the adoption of an international convention. It should be recalled that the mandate of the International Law Commission was not to develop guidelines which States might or might not choose to follow, but to offer States the possibility of harmonizing their practices by adopting binding legal instruments, which were the only means of ensuring legal certainty. For all those reasons, France believed that the Committee should recommend that the General Assembly establish an ad hoc committee to examine how some of the draft articles might be adopted as a convention.

12. **Ms. Ioannou** (Cyprus) said that State responsibility was one of the last major pillars of international law that remained unwritten. It was regrettable that the world continued to rely on customary practice in an area that was far more important than others in which the law had already been codified by the International Law Commission. The draft articles had been considered exhaustively and had reached a degree of consolidation that made them impervious to legal criticism. What remained was for States to summon up the necessary political will for their adoption in the form of a legally binding instrument.

13. Her Government considered the substantive content of the draft articles to be binding, whether as customary law or as treaty law. Nevertheless, the

formal adoption of the articles was the only natural outcome of progressive efforts to build a system of inter-State relations that operated on the basis of clear rules and that held States accountable for wrongful acts with respect to other States or, in certain grave instances, the international community as a whole.

14. Cyprus saw no convincing arguments to justify the reluctance of some to formalize a framework for State responsibility for internationally wrongful acts. With so much work having been done on the issue, the necessary tools were available to address any outstanding issues, such as the hierarchy between norms, the special legal regime pertaining to State conduct that violated the most imperative norms and the question of eligibility for reparation. Not everything in the draft articles was entirely satisfactory, of course. For example, Cyprus believed that the articles should not include such archaic notions as that of countermeasures, but rather should focus on forward-looking means for settling disputes, including judicial and other objective means for assessing violations and ensuring remedies.

15. Cyprus wished to express, in the strongest terms, its support for the holding of a conference of plenipotentiaries without delay in order to adopt the draft articles in the form of a multilateral convention, which would result in legal clarity and certainty as well as ease of reference for practitioners.

16. **Mr. Brown** (United Kingdom) said that for the reasons stated in its written comments, reproduced in document A/62/63, his Government firmly believed that further action on the draft articles was neither necessary nor desirable. The product of intense negotiation and compromise, the draft articles were not fully satisfactory to any State but had gained widespread recognition and approval, as evidenced by the Secretariat's compilation of decisions of international courts, tribunals and other bodies (A/62/62) and by a study undertaken by the British Institute of International and Comparative Law. Many States, including his own, turned to them for guidance. Little would be gained by adopting a convention, as resolution 56/83, annexing the articles, gave them firm standing, and resolution 59/35 enhanced that standing. The articles were widely cited in State practice, the decision of courts and tribunals and the writings of publicists, and their impact would likely increase with time. Moving towards a convention based on the articles might reopen old issues, undermining the careful balance represented by the scope and content of the articles. A convention whose negotiation was forced at the current stage would be unlikely to enjoy the wide support accorded to the articles and, if ratified by few States, might be a "limping" convention with little or no practical effect. It would therefore be sensible to take no further action, leaving the articles to exert a growing influence through State practice and jurisprudence.

17. **Mr. Nesi** (Italy) said that the International Law Commission's adoption of the draft articles on State responsibility had been an achievement of enormous significance for the international community. There seemed to be no major disagreement among Committee members on the need to preserve the results of the Commission's work, but opinions about how to do so differed: some favoured the immediate codification of the draft articles, while others feared that convening an international diplomatic conference could jeopardize the carefully crafted content of the articles. His delegation was of the view that the opening of a negotiating process with unforeseeable results could waste resources and pose a threat to the delicate compromise reached on the articles within the International Law Commission.

18. He had read the reports of the Secretary-General (A/62/62 and Add.1) and noted that only some of the articles had been the object of international jurisprudence. Hence, only some of their provisions had been put to a judicial test. Italy had said in 2004, and it continued to believe, that further consolidation of the draft articles was needed. His delegation therefore wished to suggest that the General Assembly should request the Secretary-General to prepare another compilation of decisions of international courts, tribunals and other bodies referring to the articles, inviting Governments also to submit information in that regard. Then, in a few years' time, the Sixth Committee might re-examine the matter and, depending on the feelings of the international community at that time, take appropriate action on the draft articles.

19. **Mr. Yokota** (Japan) said that the reports by the Secretary-General (A/62/62 and Add.1) clearly showed that the draft articles on State responsibility had begun to play a useful role in dispute settlement. The articles relating to attribution of responsibility had proved particularly useful. More controversial provisions, such as those on countermeasures and peremptory norms, on

the other hand, had not yet been supported by many decisions of international courts. Japan therefore believed that the question of whether or not to draw up a convention should be set aside for several years, during which time further State and international court practice could be accumulated.

20. **Ms. Zabolotskaya** (Russian Federation) said that the compilation of decisions of international courts, tribunals and other bodies (A/62/62 and Add.1) demonstrated the importance of the articles on responsibility of States for internationally wrongful acts, since they were already being used in practice. The articles were well balanced, and her delegation reiterated its position, stated on previous occasions, that they should be used as the basis for an international convention. However, a number of issues would require further consideration at the time of preparation of any such convention.

21. One of the most controversial of those issues was countermeasures. Her delegation had always been in favour of including provisions on countermeasures in the articles because, while they were not part of State responsibility, they constituted an important aspect of its implementation. Countermeasures were the most effective means for an injured State to induce a responsible State to cease a wrongful act and make reparation for the injury. However, they were justified only until such time as their aims had been achieved, and her delegation endorsed the provisions in part three, chapter II, of the articles concerning the object, limits, and proportionality of countermeasures and conditions for resort to such measures.

22. Many States had objected to article 54, which entitled States other than the injured State to take countermeasures, because its scope was virtually unrestricted and could mean that countermeasures would be taken to protect a collective interest even while action taken by the competent United Nations organs was in progress. Another argument had been that the means whereby an injured State could seek legal protection, and the corresponding right of a State having a "legal interest", could not be identical in scope. On the other hand, article 54 was of practical interest for the purposes of cooperation between States under article 41 and could be used to "stimulate" the responsible State to fulfil its obligations if the injured State was unable to resort to countermeasures of its own accord.

23. Turning to part two, chapter III, she expressed approval of the differentiated approach taken to breaches of obligations, depending on their seriousness. International law certainly contained principles and norms the breach of which could be defined as serious, and the process of defining a distinct set of such breaches had been a lengthy one. The concept of jus cogens was recognized in international practice, the practice of international and national courts, the theory of law and articles 53 and 64 of the Vienna Convention on the Law of Treaties, and her delegation supported the definition of a serious breach of an international obligation as a breach of an obligation arising under a peremptory norm of general international law. In that connection, she also welcomed article 26, which provided that no circumstance could be regarded as precluding the wrongfulness of an act which was not in conformity with an obligation arising under a peremptory norm of general international law.

24. Article 41 required further consideration, since it remained unclear what the "particular consequences" of a serious breach were. One solution might be to specify the forums in which States were to cooperate in order to bring the breach to an end.

25. With regard to article 25, her delegation still doubted whether it was right to include the provision that necessity could be invoked as a ground for precluding the wrongfulness of an act if the act was "the only way for the State to safeguard an essential interest against a grave and imminent peril".

26. Lastly, if controversial issues in such a sensitive area as the international responsibility of States could be resolved within the framework of a convention, that would demonstrate the strengthening of the role of international law in international relations.

27. **Mr. Nega** (Ethiopia) said that the General Assembly's 2001 decision regarding the draft articles on responsibility of States for internationally wrongful acts had been a significant step in the development and consolidation of legal principles on the topic. The compilation of decisions of international courts, tribunals and other bodies (A/62/62) revealed the practical relevance of those principles in adjudicating cases before international tribunals. He urged the Secretariat, in future reports, to refer also to the Eritrea-Ethiopia Claims Commission, which had relied heavily on the draft articles in the resolution of

disputes. States should share information on their practice relating to the implementation of the draft articles and a binding legal framework should be created. Member States should move forward to enable the General Assembly to consider adoption of the draft articles in the form of a convention.

28. **Ms. Nworgu** (Nigeria) said that the draft articles were an important addition to the framework of international law and were fast becoming an authoritative reference on questions of State responsibility. There was no urgency in concluding a convention on the topic, as the draft articles were already in use in their current form. Opening up the articles for negotiation could lead to watering them down, and it might be difficult to garner the required number of ratifications. More time was needed to consider the relevance or otherwise of a convention.

29. **Ms. Celis** (Bolivarian Republic of Venezuela) said that the responsibility of States for internationally wrongful acts was a topic vital to preserving world order, developing relations between States based on respect and equality, and strengthening the rule of law internationally. The many years of work which the International Law Commission had invested in developing the draft articles should culminate in the adoption of a legally binding instrument which would become, together with other major codifications of customary international law, one of the pillars of public international law. A conference should be convened for that purpose. Making the international responsibility of States "soft law" would weaken its governing principles by making them subordinate to treaty law, the primary source of international law. Her country therefore welcomed the Commission's proposal that the General Assembly convene a conference at a later stage for the adoption of the draft articles in the form of a convention.

30. **Mr. Kanu** (Sierra Leone) said that the draft articles on responsibility of States for internationally wrongful acts formed a comprehensive and balanced text which his delegation found acceptable, although not perfect. It appeared to be an authoritative exposition of international law on the topic and had been cited by many international courts, writers, ad hoc tribunals and national courts, as set out in the invaluable compilation of decisions of international courts, tribunals and other bodies (A/62/62). However, opening negotiations with a view to adopting the articles as a convention at the current stage would not be a profitable exercise, especially since it was impossible to predict how many States would become parties to such an instrument.

31. He reiterated his delegation's view that States could not rely on domestic law to derogate from their responsibility and international obligations. On the issue of countermeasures, his delegation welcomed the clarity provided by ensuring a proper balance between flexibility, effectiveness and prevention of abuses, especially when countermeasures were employed against smaller and weaker States. Greater clarity and uniformity were needed on the issue of the unilateral determination of the legitimacy of countermeasures.

32. **The Chairman** informed the Committee that Mr. Grzegorz Zyman of Poland would coordinate the preparation of the draft resolution on agenda item 78.

### Agenda item 158: Observer status for the Regional Centre on Small Arms and Light Weapons in the Great Lakes Region and the Horn of Africa in the General Assembly (*continued*) (A/C.6/62/L.2/Rev.1)

33. **Ms. Orina** (Kenya) announced that Niger and Somalia had joined the sponsors of the draft resolution.

34. *Draft resolution A/C.6/62/L.2/Rev.1 was adopted.*

### Agenda item 159: Observer status for the Italian-Latin American Institute in the General Assembly (*continued*) (A/C.6/62/L.5)

35. *Draft resolution A/C.6/62/L.5 was adopted.*

### Agenda item 160: Observer status for the Energy Charter Conference in the General Assembly (*continued*) (A/C.6/62/L.3 and A/C.6/62/L.3/Corr.1)

36. *Draft resolution A/C.6/62/L.3 and A/C.6/62/L.3/Corr.1 was adopted.*

### Agenda item 162: Observer status for the Eurasian Development Bank in the General Assembly (*continued*) (A/C.6/62/L.4)

37. *Draft resolution A/C.6/62/L.4 was adopted.*

*The meeting rose at 4.10 p.m.*

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## Sixth Committee

**Summary record of the 14th meeting**
Held at Headquarters, New York, on Thursday, 25 October 2007, at 10 a.m.

*Chairman*: Mr. Tulbure .................................................. (Moldova)

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**Agenda item 86: The rule of law at the national and international levels**

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*The meeting was called to order at 10.05 a.m.*

**Agenda item 86: The rule of law at the national and international levels** (A/62/121 and Add.1 and A/62/261)

1. **Mr. Sheeran** (New Zealand), speaking on behalf of the CANZ group of countries (Canada, Australia and New Zealand), said that the rule of law at both the national and the international levels was essential to lasting peace and security, the realization of sustainable development and economic growth and the promotion of human rights, accountability and democracy, which were central concerns of the Charter of the United Nations. It was therefore the common responsibility of Member States to support the United Nations work to promote the rule of law.

2. The establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit was welcome. While it was a challenge to harmonize the activities of the various players, the proposal to give priority to devising a single work plan for the rule of law, which would cover the whole of the United Nations system, would help to avoid duplication, promote synergy and coherence and maximize the impact of United Nations resources. The goal of developing common policies and strategies, in particular through the drawing up of a guidance note on the rule of law, and of intensifying cooperation between the United Nations and other relevant organizations and donors was likewise commendable. Consequently, the CANZ group of countries called upon the Secretary-General and Member States to provide the assistance and support required in order to ensure the Unit's sustainability. It would be useful for the Sixth Committee to receive a regular report from the Secretary-General on its progress.

3. In order to avoid the duplication of work being done on the rule of law in other United Nations forums, it would be advisable for the Sixth Committee to centre its discussions on one or two sub-topics with a practical and action-oriented focus. It would therefore be wise for the Committee to consider a sub-topic on strengthening international criminal justice at the international and national levels, especially in view of the "residual" or "legacy" issues which were arising as the international and hybrid criminal courts and tribunals completed their docket. As the topic of international criminal justice was broad-ranging, a more focused approach would ensure that a useful outcome was achieved. He welcomed the joint report of the International Criminal Tribunal for the former Yugoslavia and the International Criminal Tribunal for Rwanda on the residual functions of ad hoc tribunals, which provided a good starting point for the consideration of those issues which also had implications for the Special Court for Sierra Leone and the Extraordinary Chambers in the Courts of Cambodia. Furthermore that work would be of relevance to the Special Tribunal for Lebanon. More attention should be devoted to the response of the United Nations with regard to the responsibilities that would continue after those judicial bodies were wound up; as one of the ad hoc tribunals might close in 2009, much of the good work done would be undermined if those matters were not addressed promptly.

4. Another sub-topic which would be worth examining was that of technical assistance and capacity-building, because the continual development and large volume of international law presented a real challenge for many developing countries. The Rule of Law Assistance Unit could play a key role in improving the delivery of technical assistance and capacity-building in fields such as the implementation of international treaties and other obligations and the drafting of legislation and model laws. That role would fit in with the Unit's proposed workplan and modest resources.

5. **Ms. Galvão Teles** (Portugal), speaking on behalf of the European Union; the candidate countries Croatia, the former Yugoslav Republic of Macedonia and Turkey; the stabilization and association process countries Albania, Bosnia and Herzegovina and Serbia; and, in addition, Armenia, Georgia, Iceland, Moldova and Ukraine, said that, as the European Union attached great importance to the strengthening of the rule of law by the United Nations, it supported the inclusion of that subject on the Sixth Committee's agenda at its current and forthcoming sessions.

6. Respect for the rule of law was the cornerstone of the peaceful coexistence of nations and an essential prerequisite in relations among States. At the international level, the core elements of the rule of law were encapsulated in the norms of international law. Securing conditions in which the rule of law could flourish had been one of the very purposes for which the United Nations had been founded.

7. The European Union was deeply committed to upholding and developing an international order based on international law, including human rights law, and the rule of law with the United Nations at its centre. It built its own international relations and its efforts to promote peace, security and prosperity worldwide on the principle of the rule of law, in the belief that adherence to that rule was crucial to conflict prevention, to post-conflict recovery and reconstruction and to sustainable long-term development.

8. The European Union had consistently supported initiatives at the United Nations to enhance the rule of law and it had therefore been pleased to note that the 2005 World Summit Outcome had emphasized the interrelationship between peace, security, development and human rights and had made the rule of law one of its central cross-cutting themes. Consequently it welcomed General Assembly resolution 61/39 and the inclusion of the topic of the rule of law at the national and international levels in the Sixth Committee's agenda.

9. Strengthening criminal justice at the national and international levels would be a suitable sub-topic for debate at the following General Assembly session, since it addressed both the national and international levels, was well-balanced and afforded the possibility of discussing issues such as technical assistance and capacity-building, with a view to strengthening national criminal justice systems and international mechanisms for judicial cooperation. It would also provide an opportunity to consider the work and legacy of the international criminal courts and tribunals, although care would have to be taken not to duplicate deliberations on those bodies under other items on the General Assembly's agenda.

10. The inventory which the Secretary-General had been requested to submit at the General Assembly's sixty-third session should cover the means of promoting the rule of law and the normative content of that promotion. The inventory was vitally needed in order to detect gaps in and overlapping of work on furthering the rule of law and to improve cooperation on the subject within the United Nations system. It would be sensible if preparation of that report were to take place in close collaboration with the newly established Rule of Law Assistance Unit. It would also be useful if the Secretariat were to produce a report focusing on the sub-topic which would be chosen for discussion the following year.

11. The European Union had warmly welcomed the proposals contained in the report of the Secretary-General entitled "Uniting our strengths: Enhancing United Nations support for the rule of law" (A/61/636-S/2006/980) because more could indeed be done to improve the impact of assistance to Member States in that area through better communication and closer collaboration among the various United Nations agencies, programmes and processes. She was therefore pleased to note the establishment of the Rule of Law Coordination and Resource Group for that purpose.

12. For the same reason, the European Union approved of the establishment of the Rule of Law Assistance Unit within the Executive Office of the Secretary-General. The Unit should be given the financial, technical and administrative resources it required; the absence of a budget line would hamper its ability to be fully operational. Similarly, the Rule of Law Coordination and Resource Group should be financed from the regular budget. The Group and the Unit should have a broad mandate to coordinate all the relevant rule of law activities within the United Nations as well as the content of activities to promote the rule of law.

13. **Ms. Thomas Ramírez** (Cuba), speaking on behalf of the Non-Aligned Movement, said that since the purposes and principles of the Charter of the United Nations and the principles of international law were of vital importance for preserving and promoting economic development, social progress, peace and security, human rights for all and the rule of law, Member States should renew their pledge to uphold the Charter and international law.

14. The concern felt by members of the Non-Aligned Movement about the adverse effects of unilateral measures on the rule of law at the international level and on international relations led them to urge Member States to fully respect the functions and powers of the principal organs of the United Nations, especially the General Assembly, and to maintain a balance between them. The Security Council's encroachment on the traditional areas of competence of the General Assembly and the Economic and Social Council was a cause for concern. Close cooperation and coordination among the principal organs was crucial if the

Organization were to be able to meet existing and potential dangers and challenges.

15. Respect for the rule of law was essential for the maintenance of international peace and security and the achievement of socio-economic development. The General Assembly should play a decisive role in encouraging and coordinating efforts to that end. Nevertheless the international community should not replace national authorities in their work of establishing or buttressing the rule of law, but should simply provide them with the necessary support upon request. Assistance and cooperation should be supplied at the request of the recipient Governments and strictly within the mandate of the various United Nations funds and programmes. At the same time, it was necessary to bear in mind the national customs and socio-economic and political situation of countries and not to apply pre-established models which would not solve their problems.

16. Human rights, the rule of law and democracy were interdependent and mutually reinforcing. Member States must therefore fulfil their obligations of fostering universal respect for and the protection of all human rights and fundamental freedoms in keeping with the Charter of the United Nations, the Universal Declaration of Human Rights and other human rights and international law instruments.

17. It was crucial to strike a balance when developing the national and international aspects of the rule of law. The Organization should pay closer attention to the rule of law at the international level rather than emphasizing the national plane. She therefore proposed that a sub-topic entitled "Identification of the scope of the rule of law at the national and international levels within the United Nations" should be considered during the sixty-third session of the General Assembly. In that connection, she welcomed the establishment of the Rule of Law Assistance Unit and the Rule of Law Coordination and Resource Group. Mechanisms should be set up to keep Member States abreast of the work being done by the Group and the Unit and to ensure regular interaction between them and the General Assembly. To that end the Secretary-General should present annual reports on their activities and regular briefings should be arranged. The formulation of policy on and standards for the rule of law should, however, continue to be the prerogative of the General Assembly. When performing their duties the Group and the Unit should therefore take into account the General Assembly's discussions concerning the coherence of the system.

18. **Mr. Beras Hernández** (Dominican Republic), speaking on behalf of the Rio Group, said it was clear from the interim report of the Secretary-General on the rule of law at the national and international levels (A/62/261) that there was an urgent need to coordinate and strengthen the relevant activities within the United Nations system in order to provide effective assistance to States requesting support for building capacity to promote the rule of law. The setting up of the Rule of Law Assistance Unit and the Rule of Law Coordination and Resource Group was therefore welcome, because their activities would make it possible to guarantee the general coordination, quality control and more coherent design of United Nations policies on the rule of law. The countries of the Rio Group stood ready to participate fully in the consultative process led by the Group.

19. The Committee should devote equal attention to strengthening the national and the international dimensions of the rule of law. In that context, it should define precisely the contents of the international rule of law and emphasize the fundamental principles on which it rested with a view to fostering their effective implementation. One of the sub-topics which would be in keeping with the recommendation made in paragraph 5 of General Assembly resolution 61/39 was the observance of the international rule of law. Under that heading it would be possible to tackle the implementation in good faith of the international obligations assumed by States, the peaceful solution of international disputes and the subjection of international organizations to the principle of legality.

20. At the national level, the sub-topic of the implementation of international standards in a manner which was in harmony with national laws was another area where the United Nations could provide invaluable support to States which requested it. At all events, State sovereignty and the international rule of law should not be regarded as conflicting notions. International law was the international community's best instrument for securing peace, security, development and the rule of law.

21. **Mr. Ehouzou** (Benin), speaking on behalf of the African Group, said that it was vital to strengthen the rule of law in order to establish and maintain peace and security and to ensure sociopolitical and economic

development, which was of paramount importance for African countries and other developing countries. The African Group welcomed the establishment of the Rule of Law Assistance Unit and urged that it should be adequately equipped to perform its functions.

22. The African Group endorsed the two categories of rule of law activities set out in the Secretary-General's interim report (A/62/261), namely activities relating to the promotion of the rule of law at the international level and those relating to the promotion of the rule of law at the national level, and their further division into subcategories on the basis of the needs of Member States. At the same time, the Group wished to draw attention to the report of the Secretary-General entitled "Towards achieving internationally agreed development goals, including those contained in the Millennium Declaration" (E/2005/56), in which the international community was urged to address the special needs of Africa, the least developed countries and small island developing States. Indeed, the Millennium Declaration itself had stressed that the promotion of democracy, the strengthening of the rule of law and respect for human rights and fundamental freedoms, including the right to development, were crucial in order to achieve progress. Strategies to implement the development agenda required a transparent, accountable and participatory system of governance, based on the rule of law.

23. The African Group urged action by the United Nations and the international community to provide technical assistance to African countries, strengthen their legislative and judicial capacities and assist them with electoral reform, particularly those countries emerging from conflict. In that regard, the Group expressed its support for the efforts of the Peacebuilding Commission to help Member States emerging from conflict to rebuild their systems and strengthen their capacities to enforce the law. The establishment of a rule of law regime at the international level depended on the existence of workable rule of law systems at the national level.

24. Although the Secretary-General's interim report contained a large amount of information on the United Nations entities engaged in rule of law activities, it provided little information on the activities themselves, whether carried out at the national or the international level. The African Group therefore looked forward to receiving, in the report to be submitted to the General Assembly at its sixty-third session, a more detailed description of the steps taken by the Organization to assist Member States in that regard.

25. **Mr. Barriga** (Liechtenstein) said that his country was deeply committed to the rule of law at the national and international levels. The rule of law encompassed both a procedural and a substantive aspect. The procedural aspect referred to an effective system of rules which was established in accordance with a higher set of rules and made legal decisions foreseeable to the greatest extent possible. The substantive aspect referred to the fact that the system of rules must reflect basic values of humanity, such as fundamental human rights.

26. The United Nations was in a unique position to support the rule of law globally, and it was to be hoped that Member States' commitment to an international order based on the rule of law and international law, as expressed in the 2005 World Summit Outcome and General Assembly resolution 61/39, would be translated into stronger action. Despite some setbacks, the Organization had been instrumental in bringing about progress with regard to the rule of law in recent years: for example, mechanisms of international criminal justice had been further developed, as demonstrated by the referral of the Darfur situation to the International Criminal Court; new human rights instruments had been adopted; the principle of "responsibility to protect" had received full political endorsement; and rule of law elements in peacekeeping and peacebuilding activities had been considerably strengthened. Those developments gave reason for optimism.

27. The Committee should focus on the rule of law activities of the United Nations and its agencies, funds and programmes, as described in the Secretary-General's report entitled "Uniting our strengths: Enhancing United Nations support for the rule of law" (A/61/636). Liechtenstein fully supported the establishment of the Rule of Law Coordination and Resource Group, chaired by the Deputy Secretary-General, and its mandate. Headquarters-based coordination of rule of law activities was necessary for coherence and synergy. The Group's work would also advance the Secretariat's institutional memory in that area, which was currently lacking because of the decentralized nature of many activities.

28. The Group's work would be successful only if it was backed up by a minimum number of dedicated

Secretariat staff. In that regard, his delegation supported the establishment of the Rule of Law Assistance Unit, but was concerned about the sustainability of the current arrangements. The support expressed in the World Summit Outcome for the establishment of such a unit had clearly implied a mandate for the Secretary-General to request the necessary budgetary resources, and the Secretary-General had chosen to establish the Unit immediately with staff seconded from United Nations offices for the initial phase. Yet Secretariat capacities at Headquarters were limited and by no means proportional to the task at hand, as illustrated by the fact that only 2 per cent of the proposed programme budget for 2008-2009 was devoted to international justice and law.

29. The Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit filled a significant gap in the Organization and would be crucial interlocutors for the Committee. Member States were expecting an inventory of the current activities of the United Nations system and recommendations for strengthening and coordinating them in the report to be submitted at the next session. That report would benefit greatly from the progress already made and the evolution of the new structures. His delegation agreed that it should be coordinated by the Group, with the Unit's assistance, since its content would relate to the very core of their mandate.

30. The rule of law was potentially a very broad topic. His delegation favoured an approach which focused on those areas where the United Nations could add real value. That principle was already being put into practice through the provision by various United Nations system entities of concrete assistance and capacity-building in many countries where such services were otherwise not easily available. Making capacity-building more efficient would be one of the main tasks of the Rule of Law Coordination and Resource Group. The demand for capacity-building stemmed from a variety of circumstances, such as the need to rebuild the rule of law sector after a conflict. That type of situation presented particular difficulties, but in many parts of the world simply absorbing the sheer volume of international law was a major challenge. The Group and the Unit would have an important role to play in that regard.

31. His delegation warmly welcomed the increased attention being given to rule of law activities by Member States and the leadership shown in that regard by the Secretariat. Member States should support all efforts to strengthen those activities at the operational level.

32. **Mr. Lebedinsky** (Switzerland) welcomed the international community's commitment to the defence and promotion of the rule of law at the national and international levels, in line with the provisions of the 2005 World Summit Outcome. The contributions from Member States to the report of the Secretary-General (A/62/121 and Add.1) showed that the concept of the rule of law was interpreted in many different ways. Nonetheless, a number of common denominators existed. At the national level, the principles of legality, separation of powers and equal access to the justice system were intrinsically linked to the rule of law. At the international level, the rule of law was based mainly on international law as the cornerstone of relations between States.

33. On the basis of those common principles and with a view to taking greater account of the concept of the rule of law in the actions of the international community, Switzerland supported the idea, set out in General Assembly resolution 61/39, of choosing one or two sub-topics each year in order to facilitate a focused discussion for the subsequent session, without prejudice to the consideration of the item as a whole. Many topics merited the Committee's attention, such as the peaceful settlement of disputes, international criminal justice, technical assistance aimed at ensuring greater respect for the rule of law, and transitional justice. His delegation was open to any constructive proposal and would collaborate with all interested Member States.

34. As noted by the Secretary-General in his reports (A/61/636 and A/62/261), many United Nations departments, funds and programmes were engaged in rule of law activities but there was little coordination among them, which created a lack of coherence and a risk of duplication and gaps. His delegation therefore welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit, which would help to strengthen the effectiveness of United Nations action in that area. The future of the Group and the Unit should be assured through the Organization's regular budget.

35. **Mr. Duan** Jielong (China) said that his delegation supported the Committee's continued consideration of the topic of the rule of law, which would facilitate

cooperation and mutual understanding on the issue. The rule of law was a universal goal for all nations and an effective instrument for establishing and maintaining social order, promoting social justice and achieving social progress. With regard to building the rule of law at the national level, every nation had the right to choose a model suited to its own situation. At the same time, countries could learn from each other's models in order to advance the rule of law together. In the past two decades, China had made great progress in developing a rule of law system that reflected its own specific characteristics.

36. The first prerequisite for the rule of law was the establishment of a basic legal system. China had established a socialist legal system with over 200 effective laws, including the Constitution and basic laws in various spheres, as well as more than 700 administrative regulations and 8,000 local regulations, all of which reflected the country's specific circumstances.

37. Compliance with the law was also fundamental to the rule of law. In China, Government, legislative bodies, courts and prosecution services performed their respective functions in compliance with the law. Moreover, Chinese citizens and legal persons carried out their activities in accordance with the law. The principle of the Government exercising its power in full compliance with the law was upheld through various administrative laws and systems concerning decision-making, review, monitoring and accountability. Thus administrative bodies were prevented from violating the law and encroaching on the rights and interests of citizens.

38. Respect for human rights was another essential element in the rule of law. Amendments to the Chinese Constitution provided that human rights were to be respected and safeguarded by the State and that citizens' legal private property was to be protected. In addition, the recently enacted Property Law contained detailed provisions designed to protect the property rights of the State and individuals.

39. The exercise of power should be regulated and monitored in accordance with the law. Pursuant to the Chinese Constitution, all State power belonged to the people, who exercised that power through the National People's Congress and local people's congresses. The local congresses elected and monitored their local administrative, judicial and prosecutorial bodies. Political parties, administrative and judicial bodies and the Chinese People's Political Consultative Conference also played a role in monitoring, with public opinion acting as an additional check.

40. Lastly, the impartial administration of justice was vital for the rule of law. Under the Constitution, the people's courts and the prosecution service at various levels exercised their functions independently and without interference from any quarter. The judicial organs acted in strict compliance with the law, attaching equal importance to the punishment of criminals and the protection of the legitimate rights and interests of citizens. China had made great efforts over the years to make its judicial system impartial, efficient and authoritative and to improve procedures for the conduct of trials and the selection of judicial personnel. The prosecution organs had enhanced their monitoring of proceedings, enforcement and investigations, and the Supreme People's Court had the exclusive right to review death penalty decisions made by lower courts. Notwithstanding the progress that had been made, the process of developing and improving the rule of law in China was an ongoing endeavour.

41. The strengthening of the international rule of law was in the interests of people of all countries because it would contribute to the maintenance of international justice, the promotion of peace and development and the consolidation of friendly relations among nations. In that regard, the authority of the Charter of the United Nations should be maintained, international law should be improved and universally applied and international relations should be democratized. An appropriate line should be drawn between matters that fell within national jurisdiction and those governed by international law. Moreover, a balance should be struck between the common interests of all humankind, national interests and the interests of individuals. Peace, security, cooperation, development, harmony and mutual benefits should prevail over selfish national interests.

42. His delegation welcomed the establishment of the Rule of Law Coordination and Resource Group and the Rule of Law Assistance Unit. It was to be hoped that they would play a central role in coordinating the activities of the entire United Nations system relating to the rule of law. With regard to the Committee's discussions on the rule of law at the next session, his delegation wished to propose two topics, the first of which was the laws and practices of Member States in

implementing international treaties. By sharing national experience in that area, Member States could enhance mutual understanding and promote compliance with international treaties. The second topic was the principles and practices followed by Member States in their interpretation of international treaties. The sharing of national experience in that regard would promote consensus on the interpretation of international treaties and strengthen the capacity to apply international law.

43. **Ms. Thandar** (Myanmar) said that the national and international levels of the rule of law were complementary and interdependent. The challenge facing the international community was to absorb international and regional treaties into the domestic law of Member States. Capacity-building, wider dissemination of international law and the provision of technical assistance on request could be useful in that respect, particularly in developing countries, with the valuable support of the United Nations system. The preliminary information contained in the Secretary-General's interim report (A/62/261) regarding the inventory of rule of law activities within the system was a good step forward in that regard, as was the establishment of the Rule of Law Assistance Unit.

44. Her delegation recognized the primacy of customary international law and the obligation of the State to ensure that its national law was consistent with its international obligations. Myanmar was currently reviewing its domestic legislation with that in mind. In State-to-State relations, it subscribed to the five principles of peaceful coexistence and respected the role of the International Court of Justice in the peaceful settlement of disputes. It shared the view that the rule of law at the international level should be based on strict observance of the United Nations Charter, which was the pinnacle of modern international law. Her delegation was accordingly willing to cooperate with other member countries to achieve the goal of universal adherence to the rule of law at the national and international levels.

45. **Mr. Goulder** (Libyan Arab Jamahiriya) said that experience had shown that the rule of law could only be implemented in conjunction with democratic procedures. That was true at the international as well as at the national level, and therefore the bases for the activities of United Nations organs should be reviewed to ensure that they were genuinely democratic. In particular, the membership of the Security Council should be balanced, so that its resolutions would be fair and take into account the areas of competence of other United Nations organs, in particular the General Assembly.

46. **Ms. Rodríguez-Pineda** (Guatemala) welcomed the inclusion in the work of the Sixth Committee of the topic of the rule of law at the national and international levels. The two levels were clearly mutually complementary and should be compatible with each other. At the national level, Guatemala had recently been making intense efforts to promote the rule of law, in particular by setting up the International Commission against Impunity in Guatemala, which was seeking, with the support of the United Nations and a group of friendly countries, to further the investigation and prosecution of criminal activities in the country. The Commission would help to address, in particular, the challenge presented to the rule of law by the illegal vigilante groups and clandestine organizations that were a legacy of the armed conflict in the country.

47. At the international level, Guatemala contributed to United Nations peacekeeping operations and was a party to the most important international instruments aimed at combating corruption, drugs and crime and to promoting human rights and humanitarian law. It thereby showed its commitment to an international legal order based on the rule of law. As a multicultural, multi-ethnic and multilingual country, it had been particularly gratified by the recent adoption of the Declaration of the Rights of Indigenous Peoples, which was a major advance in strengthening the international rule of law and would help to improve the lives of more than 370 million indigenous people around the world.

48. The establishment of the Rule of Law Coordination and Resource Group, which would coordinate rule of law activities throughout the United Nations system was welcome and would make it possible to respond more effectively to the requests made by Member States, taking into account the specific characteristics and customs of each State. While the various rule of law categories identified by the Secretary-General were useful, not all situations lent themselves to categorization. She requested additional information regarding the composition and functions of the secretariat of the Rule of Law Coordination and Resource Group and the recommended establishment of a trust fund to promote

the rule of law. Lastly, it would indeed be useful to select one or more sub-topics for the Committee's discussions in that area, which should be marked by a pragmatic and concrete approach.

49. **Mr. Wai** (Sudan) said that his country had incorporated the principles of democracy, decentralization and accountability into its interim Constitution and respected international law and international agreements. The principal threat to universal adherence to the rule of law was the unilateral use of force. The principle of the rule of law should not be used as a tool for applying political pressure, and developing States should be allowed to pursue their aspirations for development without interference in their internal affairs.

50. The United Nations should integrate the concept of rule of law into all its institutions, starting at the top with reform of the Security Council to make it more democratic. The views of Member States should be taken into account in determining the mandate of the Rule of Law Coordination and Resource Group. While Member States might agree on some of the conceptual outlines of the rule of law principle, what was needed was an action plan with an implementation mechanism. The problems that might arise in the course of devising such mechanisms were less dangerous than the problems that would be created by moving forward without issues being clarified. A common understanding was within reach through consultations among Member States within the framework of a working group established by the Committee.

51. **Mr. Alday González** (Mexico) welcomed the positive response to the inclusion of the topic of the rule of law in the Committee's work. While, at the national level, the concept was quite well defined, at the international level, it was necessary to identify its components more clearly in order to promote measures that would contribute effectively to enhancing the place of law in the international order and thereby help to maintain world peace. The international community could only agree on the concept by identifying common elements so as to formulate the necessary functional definition, while avoiding endless discussions. Delegations should not lose sight of the fact that the Committee offered an ideal forum for expressing the different conceptions of the rule of law in the various legal systems and traditions. The report of the Secretary-General (A/62/121) was an important step in that direction, since it invited States that had not yet done so to contribute their own perspectives to the existing conspectus. The international order must be based on the laws laid down for itself by the international community and must conform with the principles imparting general effectiveness to international law as a whole, as embodied in the norms of *pacta sunt servanda, jus cogens* and Article 103 of the United Nation Charter.

52. In response to the recommendation of the General Assembly in paragraph 5 of its resolution 61/39, his delegation proposed two sub-topics for the discussion on the rule of law. The first sub-topic, implementation of international norms through their incorporation into the domestic legal order, reflected an awareness that domestic legislative and administrative measures did not always give adequate or effective expression to international commitments, thus affecting the *pacta sunt servanda* norm. The General Assembly could request Member States to provide information about the measures taken within their respective jurisdictions to implement the norms of international law contained in the treaties to which they were parties.

53. The second sub-topic proposed, namely, the role of international courts in strengthening the rule of law, reflected his delegation's conviction that there could be no rule of law without effective judicial mechanisms for the peaceful settlement of disputes concerning the implementation or interpretation of international law by States. It was therefore important to strengthen the role of international judicial organs, including the International Tribunal for the Law of the Sea, and to promote acceptance of the compulsory jurisdiction of the International Court of Justice. A study might accordingly be undertaken on treaties providing for the submission of issues of implementation or interpretation to international courts, the number of States parties thereto, reservations entered thereon, the number of cases submitted and the effectiveness of the relevant provisions. The General Assembly might call on the Secretary-General to request such information from international courts. That would also serve to identify the most suitable wording to be used in international provisions for the peaceful settlement of disputes.

54. His delegation supported the establishment of the Rule of Law Assistance Unit and reiterated its commitment to continue working with other delegations in pursuit of concrete means of strengthening the rule of law.

55. **Mr. Maharia** (India) said that promotion of the rule of law was an essential tool for ensuring sustainable development and peaceful coexistence and cooperation among States. India welcomed the establishment of the Rule of Law Coordination and Resource Group, and the Rule of Law Assistance Unit, but wished to point out that policy issues being debated elsewhere in the United Nations in the context of efforts to improve system-wide coherence should not be linked to the coordination functions of the Group or the Unit. It was to be hoped that the two new entities would help in coordinating the activities of all United Nations specialized agencies and organizations and ensure that there was no duplication in their work on promoting the rule of law or assisting developing countries in drafting national legislation to implement specific conventions and organizing training activities to facilitate the implementation and interpretation of such legislation.

56. It was evident that the United Nations needed to rationalize and harmonize its rule of law work, and to coordinate more effectively, both internally and with outside actors. To that end, the Secretary-General had proposed a division of labour among the key United Nations actors, with designated lead entities assuming clearly defined responsibilities for specific areas of rule of law activities. For such an integrated approach to succeed, detailed identification of the nature and scope of technical assistance being provided by each entity would be crucial. The comprehensive inventory to be submitted by the Secretary-General to the sixty-third session of the General Assembly should include that information.

57. With regard to the Sixth Committee's consideration of the rule of law, the challenge was how to have a structured discussion, given the enormous scope of the topic. The Committee should choose only one or two sub-topics each year, and cover them in detail. Equal emphasis should be given to both the national and the international aspects of the rule of law. However, as many delegations still had doubts about the topic's exact nature and scope, it would be useful to have an exchange of views on the scope of the rule of law at each of the two levels in order to arrive at a common understanding. That was the aim of the proposal put forward by Cuba on behalf of the Non-Aligned Movement.

58. **Mr. Nguyen Ba Son** (Viet Nam) said that the rule of law was currently recognized and practised in most parts of the globe, which was a significant achievement of human civilization. In the 2005 World Summit Outcome, Heads of State and Government had reaffirmed their commitment to an international order based on the rule of law and international law. To fulfil that high-level commitment, further guidance for the resolution of specific problems, at both the international and the national level, was needed. Strengthening the rule of law at the international level required, first and foremost, the progressive development and scrupulous implementation of international law. The international community had made treaties and rules and established mechanisms in almost every area of international life, but much remained to be improved in the enforcement of international law. Selectiveness and double standards were often evident in its application, something that ran counter to the very notion of the rule of law. Moreover, many developing and least developed countries found their efforts to take part in the codification and progressive development of international law, or to undertake legal reforms and strengthen the national rule of law, challenged by capacity and resource constraints.

59. The Committee should identify specific measures to be taken in order to strengthen the rule of law, focusing its discussions on measures aimed at improving the codification and progressive development of international law; increasing the number of States parties to international treaties and improving the implementation of international law; establishing and/or consolidating appropriate organs and procedures that could help to enforce international law; and promoting general awareness and better understanding of international law.

60. The rule of law was embodied in the Vietnamese Constitution and his Government attached great importance to upholding it in pursuing the country's socio-economic development. Key elements in its efforts to promote the rule of law were two strategies aimed at establishing a uniform, transparent and viable legal system: the National Strategy for the Development and Improvement of the Legal System and the Strategy on Judicial Reform. The first strategy covered every aspect of social life, from economic development and political stability to protection and promotion of human rights. The second focused on developing an effective and fair judicial system. In order to implement them, Viet Nam would continue to

cooperate with United Nations entities and potential donors. On the basis of its experience, Viet Nam suggested that the coordinating role of the United Nations in providing assistance to developing countries for rule of law activities should be strengthened, possibly through the Rule of Law Coordination and Resource Group.

61. **Mr. Pratomo** (Indonesia) said that that the rule of law was the very foundation of the United Nations. It served as a compass for the interaction of nations on an equal basis and in accordance with legally established standards, ensuring peace, order and predictability in inter-State relations. As a firm believer in the rule of law in all fields of human endeavour, Indonesia applauded the Secretary-General's decision to make strengthening it a top priority and was pleased to have been part of the constant efforts of the United Nations to promote the rule of law at the national and international levels. His delegation welcomed the establishment of the Rule of Law Assistance Unit, which would doubtless facilitate the process of incorporating international law into domestic legislation. However, Indonesia wished to emphasize that any assistance provided by the Unit should supplement the efforts of national authorities and should be in line with the priorities envisaged by the requesting government.

62. There were still divergent views among Member States about where the focus should be placed in the work to be undertaken on the rule of law. While some States emphasized the international dimension of the rule of law, others stressed strengthening judicial mechanisms at the national level. He believed that the two perspectives were merely the different sides of the same coin and that there was no conflict between them. The Committee should identify issues of shared concern with regard to both international and national aspects of the rule of law, which would enable it to sharpen the focus of its discussions. Admittedly, that would not be easy, given the wide scope of the subject. However, the Committee could draw on the lessons learned from its consideration of other matters, such as the law of the sea. It might begin by discussing issues relating to the rule of law in the international sphere at the next session and then move on to consider the national aspects of the rule of law at a subsequent session. In that connection, the proposal put forward by the representative of China concerning the focus of the Committee's deliberations was worth considering, as it would help to elucidate the link between the rule of law at the national and the international levels.

63. Because there was no supranational mechanism that could enforce States' obligation to obey international law, it was important to find ways to enhance their compliance, since universal adherence to a rule-based international system would ensure the stability essential for cooperation among Member States. It would also strengthen the notion of justice and fairness in inter-State relations, which in turn would promote a better public perception of international law, expediting the acceptance and harmonization process at the national level.

*The meeting was suspended at 12.05 p.m. and resumed at 12.35 p.m.*

64. **Mr. Dos Santos** (Mozambique) said that the Committee's current discussion represented a commendable step towards materializing the commitment made during 2005 World Summit to an international order based on the rule of law and international law. Mozambique welcomed the Secretary-General's decision to establish the Rule of Law Coordination and Resource Group to act as the focal point for coordinating the rule of law activities of the United Nations system. It was also pleased to note that activities for the reinforcement of the rule of law were gaining a central role in the mandates of peacekeeping missions, as it was now widely recognized that establishing the rule of law was an important element in the achievement of sustainable peace and security in post-conflict situations.

65. United Nations rule of law activities were not limited to conflict and post-conflict contexts, however. They also included activities in the context of long-term development. His delegation considered that approach highly appropriate, as many countries were now striving to consolidate democracy and build the rule of law outside of post-conflict contexts.

66. Mozambique was committed to strengthening the rule of law at the national and international levels. Its previous Constitution, adopted in 1990, had introduced the democratic rule of law, founded on the separation of powers and on political pluralism. The country's current Constitution, adopted in 2004, reaffirmed and deepened the commitment to those fundamental principles and to the rule of law. Legal and judicial reforms currently under way aimed to enhance coordination among the various institutions involved in

the administration of justice in order to establish a judicial system that would enable the rule of law to become firmly rooted and uphold the aforementioned constitutional principles. Those reforms would be of paramount importance for the consolidation of peace, democracy and respect for the fundamental rights and freedoms of individuals.

67. His Government believed that democracy and the rule of law were a prerequisite for the full participation of Mozambicans in the country's life, particularly the process of nation-building and development. Accordingly, the recent constitutional and judicial reforms had been preceded by public hearings which had afforded an opportunity for citizens, politicians, non-governmental organizations and other civil society stakeholders to participate in the search for ways to ensure better coordination among the institutions of government.

68. The rule of law activities of the United Nations system should encourage greater promotion, dissemination and teaching of international law; wider participation of all States in the codification and progressive development of international law; and building of national capacity for the implementation of international legal instruments. Coordination and cooperation with regional bodies was of great importance in order to tailor United Nations activities to their specific needs and priorities. His delegation welcomed the 2006 declaration on enhancing United Nations African Union cooperation. Enhanced cooperation should be promoted in the context of initiatives such as the New Partnership for Africa's Development, particularly in the areas of accountability and good governance. African leaders had adopted the African Peer Review Mechanism, a voluntary scheme aimed at strengthening democratic rule and governance structures in African countries through constructive peer scrutiny and sharing of best practices with regard to good governance, transparency and accountability. As of June 2007, 26 countries, including Mozambique, were participating in the mechanism.

69. **Ms. Negm** (Egypt) said that the rule of law at the national and international levels should be in accordance with the general principles of international law and with the purposes and principles of the United Nations as stipulated in the Charter. Given the divergence of views among Member States in their understanding of the issues to be addressed under the rubric of "the rule of law", it would be important to establish a definition of the term that all Member States could agree upon and to identify clear standards for the implementation of the rule of law.

70. While endeavouring to avoid duplicating the discussions taking place in other forums within the United Nations, the Sixth Committee should examine several topics relating to the rule of law at the national and international levels. With regard to the national level, Egypt considered the following topics particularly important: the principle of territoriality of national laws and the effects of one State's imposing its jurisdiction on citizens of another State for crimes committed beyond its territory without such action being supported by international conventions or the principles of international law; respect for the sovereignty of States over their territories and their right to choose the optimal legal regime, based on the general principles of international law; and the best means of providing States, at their request, with assistance to build their capacity for the establishment of a just legal system.

71. Concerning the rule of law at the international level, Egypt suggested the following topics: methods of work and adoption of resolutions by international organizations, especially the United Nations, to ensure the application of the principles of international law and the provisions of the Charter; the means of achieving democracy at the international level, especially with respect to the adoption and implementation of United Nations resolutions; the impact of failure to implement the principle of equality of all before the law on compliance with resolutions of international organizations; and the impact of failure to implement resolutions of international organizations and judgments of the International Court of Justice on the stability of international relations.

72. Her delegation also attached importance to studying the relationship between extending the rule of law at the international level and its impact on the rule of law at the national level, especially in cases of aggression, armed struggle, occupation and illegal use of force.

73. Egypt welcomed the establishment of the Rule of Law Assistance Unit but reaffirmed the need for Member States to determine its mandate, in keeping with the general guidelines for the provision of technical and capacity-building assistance set forth in

General Assembly resolution 59/250. The Unit should also ensure that its activities did not overlap with the efforts under way to improve system-wide coherence and that it did not become involved in policymaking, which was the province of the General Assembly.

74. Her delegation looked forward to continuing discussion within the Sixth Committee aimed at arriving at a common understanding among Member States of the concept of the rule of law.

75. **Mr. Shatil** (Bangladesh) said that the adoption of General Assembly resolution 61/39 had been an important step forward in defining and determining the scope of the concept of the rule of law. In order to ensure a world order based on international law, measures must be taken to ensure better implementation of international law, notably through technical assistance and national capacity-building. The United Nations should increase the efficiency of such assistance, expand it to broader areas of international law and focus on the specific needs of Member States. Measures should be taken to support institutional development for the promotion of international law and encourage more States to become parties to international instruments. There should also be a call for increased contributions to the Secretary-General's Trust Fund to Assist States in the Settlement of Disputes through the International Court of Justice.

76. His delegation believed that the Committee should further intensify its interaction with the International Law Commission, whose role was crucial in several areas, particularly with regard to the relationship between human rights and international humanitarian law. It also considered that the Secretary-General should be authorized to make extensive use of the power to request advisory opinions from the International Court of Justice. It welcomed the establishment of the Rule of Law Assistance Unit, while stressing that it should take into account the central role of the Office of Legal Affairs and not duplicate work done elsewhere. The proposed inventory of rule of law activities in the United Nations system would be valuable in that regard.

77. At the national level, Bangladesh had been actively promoting the rule of law and justice in all spheres of life, in particular through administrative, judicial and electoral reforms. It had recently taken steps to separate the judiciary from the executive branch of government and had strengthened the Anti-Corruption Commission, which functioned as an independent watchdog. In addition, the Government would soon be establishing a Human Rights Commission, thereby ensuring that international standards of human rights and personal freedom were maintained in the country. Bangladesh was mindful of the importance of developing accountable and coherent law-enforcement institutions operating within the framework of international legal norms. He welcomed the current discussion on the rule of law and hoped that it would lead, through an inclusive process, to the establishment of a global law-based regime in international relations.

*The meeting rose at 1 p.m.*